



EMPLOYMENT SECURITY LAW

K.S.A. 44-701 et. seq.
as amended by
the 2012 session



FOREWORD

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LEGISLATIVE CHANGES

The 2012 Kansas Legislature made no changes to the Kansas Employment Security Law during this session.

PREVIOUS LEGISLATIVE CHANGES

2011 LAW CHANGES

K.S.A. 44-703(o)(1) [Effective May 19, 2011]

Added explanation and clarification to taxable wage base reporting. The verbiage “in excess of” was added to emphasize earnings over the threshold were excess.

K.S.A. 44-703(i)(1)(B) [Effective July 1, 2011]

Addressed changes made to the usual Common Law interpretations of Employer-Employee relationships as defined in K.S.A. 44-703(i)(3)(D). This directs investigations to encompass the totality of the situation and a consistent practice in investigations.

K.S.A. 44-703(i)(3)(D) [Effective July 1, 2011]

Defines the changes related to the Contract of Hire guidelines and establishes that determinations will be based on facts that the business/employer retains not only the right to control the end results of the activities of the individual but also the manner and means by which the end result is accomplished. It adds 44-703(i)(3)(G)(ii) which establishes included parameters for the determinations basis.

K.S.A. 44-704a(a)(2)(A) [Effective July 1, 2011]

Provides the explanation for the requirements for the “trigger ON” for extended unemployment insurance benefits. This provides a change from “either or” to “and” of factors. This also establishes a three-year look back process from the previous two-year plan.

K.S.A. 44-704a(a)(2)(B)(i) [Effective July 1, 2011]

This establishes the guidelines for the “Trigger Off” of extended unemployment insurance benefits.

K.S.A. 44-705(d)(2) [Effective July 1, 2011]

This changes the “waiting week” process by removing the eligibility requirements for payment of the waiting week. This included the rescinding of section 44-705(d)(3).

K.S.A. 44-706(a)(12)(B)(iii) [Effective July 1, 2011]

This describes accepted reasons for leaving employment when related to unemployment insurance claims associated with family or household members of domestic abuse.

K.S.A. 44-706(a)(4) [Effective July 1, 2011]

Establishes a change to acceptance for voluntarily leaving employment to relocate with family or spouse. This removes all acceptable reasons except for the spouse of a military member.

K.S.A. 44-710(b) [Effective July 1, 2011]

This changes establishes guidelines for tax rates and base of contributions. This extends the current tax rate tables through the years 2011, 2012, 2013 and 2014. This maintains that tax rate groups 1-32 as positive balanced accounts and tax rate groups 33-51 as maximum rate positive balance groups.

K.S.A. 44-710(b) [Effective July 1, 2011]

This allows for the establishment of the Surcharge Tax Rate for negative balanced employers by developing a new surcharge rate schedule for calendar years 2012, 2013, 2014 and then establishes a separate schedule for years after 2014. This surcharge is developed to repay Title XII loans of the Social Security Act.

K.S.A. 44-710a(e) [Effective July 1, 2011]

This established the state treasury fund for all monies collected for the repayment of Title XII loans. The fund will be the “Employment Security Interest Assessment Fund.”

K.S.A. 44-712(f) [Effective July 1, 2011]

This established the authority for the Kansas Department of Labor to borrow funds from the Pooled Money Investment Board (PMIB) to fund debt obligations of loans from the federal government. This establishes the guidelines for the loans and the repayment processes.

K.S.A. 44-718(g)(1)(D) [Effective July 1, 2011]

This establishes the authority for claimants to have State of Kansas withholding taxes deducted from their unemployment insurance benefit payments at a rate of 3.5%.

K.S.A. 44-767 [Effective July 1, 2011]

Classification of workers; withholding tax and payroll information; unemployment insurance contributions due; determination of misclassification of worker, collection of income withholding taxes.

K.S.A. 44-768 [Effective July 1, 2011]

Determination of classification of worker as an employee or independent contractor; circumstances for reasonable basis of classification; imposition of penalties, when.

2010 LAW CHANGES [Effective 7-1-2010]

1. **K.S.A. 44-710(b)(1)**

Establishes special rate provisions for calendar years 2010 and 2011 for tax rate groups 1 through 32, and then establishes the 5.4% cap for rate groups 33 through 51.

2. **K.S.A. 44-717(a)(1)**

Establishes a special 90 day payment extension option for the first three calendar quarters of the calendar years 2010 and 2011. This option provides for no tax payments or interest assessments for the 90 day approved extension period. The original penalty provisions apply to the filing of reports. The original interest charge provisions also apply if the 90 day extension period is exceeded.

3. **K.A.R. 50-2-21(a)**

Computation of employer contribution rates for calendar years 2010 and 2011.

1. Contribution Rate definition.
2. 2010 original tax rate computation definition and process explanations and expiration.

2009 LAW CHANGES [Effective 7-1-2009]

1. **K.S.A. 44-703(a)(1)(A) and (B)**

Provides claimants with the possibility of an Alternative Base Period.

2. **K.S.A. 44-703(s)**

Added the job training program authorized under Workforce Investment Act of 1998.

3. **K.S.A. 44-704c(a) and (b)**

Allows for approved training programs to be eligible for up to 26 weeks of additional benefits. It also provides guidelines for claimants on a shared work plan and additional benefit qualifications processes.

4. **K.S.A. 44-705(c)(1) and (2)**
Provides chapter clarification and explanation and adds paragraph (B) to explain qualification for part-time employment and benefit eligibility.
5. **K.S.A. 44-706(b)2**
Removes the language “Uniform Controlled Substances Act” and replaces it with “Section 1.”

2008 LAW CHANGES

1. **K.S.A. 44-710(a) [Effective 7-1-2008]**
Changes the reportable contributions amount for any calendar quarter from less than \$1 to less than \$5.
2. **K.S.A. 44-717(h) [Effective 7-1-2008]**
Changes the refund amount from \$1 or greater to \$5 or greater.
3. **K.S.A. 44-717(k) [Effective 7-1-2008]**
Mandates employers and 3rd party administrators to file contribution returns and to pay any contributions, benefit cost payments or reimbursing payments by electronic means.
4. **K.S.A. 44-717(k)(1) [Effective 7-1-2008]**
Mandates employers and 3rd party administrators, after June 30, 2008, with 250 or more employees or client employees file all contributions returns and any subsequent payments electronically.
5. **K.S.A. 44-717(k)(2) [Effective 7-1-2008]**
Mandates employers or 3rd party administrators, after June 30, 2009, with 100 or more employees or client employees file all contributions returns and any subsequent payments electronically.
6. **K.S.A. 44-717(k)(3) [Effective 7-1-2008]**
Mandates that any 3rd party administrator, after June 30, 2010, with 50 or more client employees file all contributions returns and pay any subsequent payments electronically.

2007 LAW CHANGES

1. **K.S.A. 44-703(h)(2)(A)(iii) [Effective 1-1-2007]**
An employer may elect to establish an unemployment tax account at time of initial registration.
2. **K.S.A. 44-703(i)(4)(Y) [Effective 7-1-2007]**
The term employment will not include services performed by an owner-operator of a motor vehicle that is leased or contracted to a licensed motor carrier with the services of a driver and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee.
3. **K.S.A. 44-705 [Effective 7-1-2007]**
The waiting week requirement shall not apply to claimants who become unemployed as a result of an employer terminating business operations in Kansas declaring bankruptcy, or initiating a work force reduction under Workforce Adjustment & Retraining Notification Act. If a claimant does not fall under one of these three categories, they may be paid for their waiting week upon completion of three weeks of unemployment consecutive to such waiting period.
4. **K.S.A. 44-710a(a)(1)(B) [Effective 1-1-2007]**
Employers who are not eligible for a rate computation shall pay contributions at the rate of 4.0%, except for employers engaged in the construction industry shall pay at the rate of 6.0%.

5. **K.S.A. 44-710a(a)(3)(C) [Effective 1-1-2007]**

Employers eligible for a rate computation and current in filing quarterly wage reports and in payment of all UI taxes shall be issued reduced tax rates – for rate groups 1 through 5 the rate will be 0.00%; rate groups 6 through 28 the rates are reduced by 50%; and rate groups 29 through 51 the rates are reduced by 40%. If the average high cost multiple falls below 1.2, employers will not be eligible for these reduced rates.

6. **K.S.A. 44-712(b) [Effective 7-1-2007]**

Provides for the issuance of debit cards to pay a claimant his or her weekly unemployment benefits – eliminates the need to mail a paper warrant.

7. **K.S.A. 44-717(b)(3) [Effective 7-1-2007]**

Removes the prime-contractor's responsibility clause from the law.

2006 LAW CHANGES

1. **K.S.A. 44-765 [Effective 7-1-2006]**

In determining whether an employment relationship exists between a licensed motor carrier and a driver, the fact that the licensed motor carrier, pursuant to a lease agreement, requires the driver to comply with applicable provisions of the regulations of the state corporation commission, federal motor carrier safety administration or other federal agency having jurisdiction of motor carriers shall not be considered as the licensed motor carrier's exercise of control over the driver.

2. **K.S.A. 44-766 [Effective 7-1-2006]**

No person shall knowingly and intentionally misclassify an employee as an independent contractor for the sole or primary purpose of avoiding either state income tax withholding and reporting requirements of state unemployment insurance contributions reporting requirements.

2005 LAW CHANGES

1. **K.S.A. 44-703(o) [Effective January 1, 2006]**

Excludes from the term "wages" payments to a health savings account if such payments can be excluded from income under the federal internal revenue code of 1986.

2. **K.S.A. 44-706(u) [Effective July 1, 2005]**

If an individual is hired while charges are pending for a disqualifying felony under K.S.A. 39-970 or K.S.A. 65-5117, is convicted of the crime and is subsequently discharged from employment because of the conviction, the individual is disqualified for benefits.

3. **K.S.A. 44-706(b)(2) [Effective July 1, 2005]**

Breath alcohol testing is an acceptable means of testing and a positive breath test result is defined as being .04 or greater. Parameters are established for chemical testing and to define positive chemical test results in accordance with the levels listed in K.S.A. 44-501 of the Workers Compensation Act.

4. **K.S.A. 44-710a(b) [Effective January 1, 2006]**

These amendments address the problem of unlawful transfers and the manipulation of State experience rating system which is known as SUTA dumping – or State Unemployment Tax Avoidance.

Mandatory Transfers. Unemployment experience must be transferred whenever there is substantially common ownership, management or control of two employers, and one of these employers transfers its trade or business (including its workforce), or a portion thereof, to the other employer. This requirement applies to both total and partial transfers of business.

Prohibited Transfers. Unemployment experience may not be transferred, and a new employer rate (or the state's standard rate) will be assigned, when a person who is not an employer, acquires the trade or business of an existing employer. This prohibition applies only if the department finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions.

5. **K.S.A. 44-716a [Effective July 1, 2005]**

Provides for funds in the special employment security fund to be utilized for the payment of fees assessed for electronic payments or credit card payments made by employers.

6. **K.S.A. 44-719(f) [Effective January 1, 2006]**

Provides for civil and criminal penalties for employers or individuals "knowingly" violating or attempting to violate the requirements in K.S.A. 44-710a(b), dealing with mandatory and prohibited transfers. Penalty is also applicable to an individual who knowingly gives advice leading to such violation.

2004 LAW CHANGES

1. **K.S.A. 44-703(i)(4)(M)**

This legislation removed the coverage for labor performed by an inmate of a custodial or correctional institution when performed for a private for-profit employer. Employers are no longer required to report and pay contributions on such employment.

2. **K.S.A. 44-710a(b)(4)**

This legislation was amended by adding clarifying language to the process used by the department in assigning the applicable contribution rate to a successor employer.

3. **K.S.A. 44-706(a)**

If an individual fails to return to work after expiration of an approved personal or medical leave, they will be deemed to have quit their employment.

4. **K.S.A. 44-706(b)(1)**

Failure of the employee to notify the employer of an absence shall be "considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment".

5. **K.S.A. 44-706(b)(3)(A)**

The definition of "misconduct" for absences or lateness has been expanded to include incarceration, resulting in absence from work of three days or longer, excluding Saturdays, Sundays, and legal holidays.

6. **K.S.A. 44-706(b)(3)(B)**

If the employee alleges that the employee's repeated absences were the result of health related issues, the evidence shall include documentation from a licensed and practicing health care provider.

7. **K.S.A. 44-706(t)**

If an employee fails a pre-employment drug screen test required by the employer and the discharge occurs not later than seven days after the employer is notified of the result of such drug screen, this will be construed as misconduct.

8. **Executive Reorganization Order No. 31**

Sec. 2. On the effective date of this order, the department of Labor is hereby renamed the department of labor, and the secretary of Labor is hereby renamed the secretary of labor.

2003 LAW CHANGES

1. **K.S.A. 44-703, 44-704, 44-706, 44-710, 44-757 [Effective 7-1-2003]**

This bill provides for two weeks of additional benefits to individuals exhausting regular and any federal or state extended benefits during the period, July 1, 2003 through June 30, 2004. It eliminates the deduction for social security and railroad retirement benefits. It exempts from employment for unemployment tax purposes certain alien agricultural workers.

2. **K.S.A. 44-706, 44-760, 44-761, 44-762, 44-763, 44-764 [Effective 7-1-2003]**

This legislation makes victims of domestic violence eligible for unemployment insurance benefits.

3. **K.S.A. 44-706, 44-704b, 44-709**

This legislation was a “trailer bill.” It reconciled changes to K.S.A. 44-706 and amended K.S.A. 44-704b and 44-709.

2002 LAW CHANGES

1. **K.S.A. 44-703(b)(1), 44-703(hh) AND 44-705(g) [Effective 7-1-2002]**

This Bill establishes an alternative wage base period for workers with a workers compensation injury. This provision is designed for injured workers who recover from a work related injury to the extent that the worker can return to work but is unable to find work and then would find that they are excluded from unemployment benefits since there were no wages in the base period.

2. **K.S.A. 44-710(c)(2)(H) [Effective 7-1-2002]**

The bill provides that no contributing employer or rated government employer account will be charged if their pro rata share of benefit charges is \$100.00 or less. [NOTE: To be applicable, the employer’s notice of potential benefit charges would have to be \$100.00 or less.]

2001 LAW CHANGES

1. **K.S.A. 44-703(i)(3)(E), K.S.A. 44-703(i)(4)(A), and K.S.A. 44-703(i)(4)(L) [Effective 7-1-2001]**

Effective July 1, 2001, the term “employment” now includes service performed for an Indian tribe or tribal units by placing them in the same category as political subdivisions and affording them the same payment options as 501(c)(3) organizations. Such services are covered beginning December 22, 2000. It also excludes coverage if the services are performed as a member of a legislative body or of the judiciary of an Indian tribe, as a nontenured policymaking or advisory position performing duties pursuant to tribal law, or as part of an employment work-relief or work training program assisted or financed in whole or in part by an Indian tribe.

2. **K.S.A. 44-712(b)(2) and K.S.A. 44-714(o) [Effective 7-1-2001]**

All money remitted to the state treasurer from State agencies shall be in accordance with the provisions of K.S.A. 75-4215. This applies to the special fund established in the employment security law which is divided into three accounts, a clearing account, an unemployment trust fund account, and a benefit account. All monies received from fees charged for copies of documents must also be remitted in accordance with K.S.A. 75-7215.

2000 LAW CHANGES

No law changes were made by the 2000 Kansas Legislature.

1999 LAW CHANGES

1. **K.S.A. 44-706(b)(3)(C) and K.S.A. 44-706(b)(3)(E) [Effective 7-1-99]**
Requires employers to give or send written notice to employee's last known address for misconduct due to chronic absenteeism.
2. **K.S.A. 44-709(k) [Effective 7-1-99]**
Allows parties to benefit claim hearings to appear personally or by a designated representative and hearing will be conducted by phone or other electronic communication unless in-party hearing is requested.
3. **K.S.A. 44-710a(a)(2)(E) [Effective 7-1-99]**
Increases surcharge for negative account balance employers to 2%.
4. **K.S.A. 44-710a(a)(3) [For tax rate years 2000, 2001, and 2002]**
A new schedule IIIA applies when computing the planned yield for employers.
5. **K.S.A. 44-710a(a)(3)(C) [For 2000, 2001, and 2002]**
On January 15 the Secretary of Labor shall report to the legislature the adequacy of the fund and on July 15 the same report to the legislative coordinating council.

1998 LAW CHANGES

1. **K.S.A. 44-703(i)(W) [Effective 7-1-98]**
Excludes from the term "employment" services performed by election officials and election workers receiving less than \$1,000 a year.
2. **K.S.A. 44-703(o)(14) [Effective 7-1-98]**
Excludes from the term "wages" educational assistance under section 127 of the federal internal revenue code of 1986.
3. **K.S.A. 44-705(c) [Effective 7-1-98]**
Codifies into law the denial of unemployment benefits for inmates.
4. **K.S.A. 44-710a(a)(1)(B)(i) and 44-710a(a)(3)(C) [Effective 7-1-98]**
Extends the tax moratorium to include calendar year 1999 and changes the phase-in provision to 2000.
5. **K.S.A. 44-710a(a)(2)(B) and 44-710a(a)(2)(E) [Effective 7-1-98]**
Extends rates for negative account balance employers to include calendar year 1999.
6. **K.S.A. 44-712(d)(4) [Effective 7-1-98]**
Adds to the section of the law that deals with transfer of Reed Act funds for Federal fiscal years 1999, 2000, and 2001.
7. **K.S.A. 44-716a(e) [Effective 7-1-98]**
Allows transferring of funds from the special employment security fund to pay interest to employers who have erroneously paid contributions and benefit cost payments.
8. **K.S.A. 44-717(a) [Effective 7-1-98]**
Amends language dealing with interest on unpaid "payments in lieu of contributions.
9. **K.S.A. 44-717(h) [Effective 7-1-98]**
Allows interest on erroneously collected payments to be deducted from subsequent contributions due.

10. **K.S.A. 44-717(i) [Effective 7-1-98]**

Repealed this section since reimbursing employers would not have a balance to refund.

11. **K.S.A. 44-718(c) [Effective 7-1-98]**

Allows for the continuous levy up to 15% of an individual's unemployment benefit amount by I.R.S.

1997 LAW CHANGES

1. **K.S.A. 44-703(i)(4)(V) [Effective 7-1-97]**

Excludes from the term "employment" services performed as a qualified direct seller.

2. **K.S.A. 44-709(b)(1) [Effective 7-1-97]**

Broadens the means by which benefit claim notices can be delivered to employers and by which employer information can be returned to the department.

3. **K.S.A. 44-710(e)(2) and 44-717(a) [Effective quarter ending 9-30-97]**

Changed the due date for "Employer's Quarterly Wage Report & Contribution Return" to the last day of the month following the close of each calendar quarter. Also, it is deemed filed as of the date it is placed in the U.S. mail.

4. **K.S.A. 44-710a(a)(1)(B)(i) and 44-710a(a)(3)(C) [Effective 7-1-97]**

Extends the Tax Moratorium to include calendar year 1998 and changes the phase-in provision to 1999.

5. **K.S.A. 44-710a(a)(2)(B) and 44-710a(a)(3)(C) [Effective 7-1-97]**

Extends rates for negative account balance employers to include calendar year 1998.

6. **K.S.A. 44-710b(a) [Effective 7-1-97]**

Changed the location of administrative hearings to the county where the employer maintains a principle place of business. Also, the hearing officer shall render a decision in 90 days.

7. **K.S.A. 44-717(h) [Effective after 12-31-97]**

Funds erroneously collected from employer shall bear interest at the rate prescribed in K.S.A. 79-2968.

8. **K.S.A. 44-718(f) [Effective 7-1-97]**

Allows deducting over issuance of food stamp coupons "to a household" from unemployment insurance benefits payable to "a member of the household."

9. **K.S.A. 44-759 [Effective 1-1-98]**

All administrative rulings shall be published in a medium readily accessible to employers. Also, rulings shall be published in the Kansas Register within 30 days of the ruling.

1996 LAW CHANGES

1. **K.S.A. 44-706(s) [Effective 7-1-96]**

Clarifies the collection of back-pay awards from the claimant and from the employer.

2. **K.S.A. 44-710a(a)(1)(B)(i) and K.S.A. 44-710a(a)(3)(C) [Effective 3-28-96]**

Extends the tax moratorium to include calendar year 1997.

3. **K.S.A. 44-710a(a)(2)(B) and K.S.A. 44-710a(a)(2)(E) [Effective 3-28-96]**

Changes the rates for negative account balance employers for calendar years 1996 and 1997.

4. **K.S.A. 44-710(e)(1)(D) [Effective 7-1-96]**
Changes the date for reimbursing employer election to January 1 of the year such election is received.
5. **K.S.A. 44-714(d) [Effective 7-1-96]**
Limits the term for members of the Employment Security Advisory Council to four years.
6. **K.S.A. 44-714(j) [Effective 7-1-96]**
Deletes provisions regarding protection against self-incrimination.
7. **K.S.A. 44-718(e) [Effective 7-1-96]**
Provides that a person receiving unemployment compensation can elect to have federal taxes withheld.

1995 LAW CHANGES

1. **K.S.A. 44-703(w)(4) [Effective 7-1-95]**
Amends the definition of agricultural labor to codify the 50 percent rule.
2. **K.S.A. 44-705(e) [Effective 4-6-95]**
Clarifies that an individual has to “return to work” in order to qualify for benefits in a subsequent benefit year.
3. **K.S.A. 44-705(f) [Effective 4-6-95]**
Requires claimant needing reemployment services determined by a profiling system to participate in such reemployment services to be eligible for benefits or show justifiable cause for failure to participate.
4. **K.S.A. 44-706(a), (b)(1), (b)(2), (b)(2)(A), (b)(2)(B), (b)(2)(C), (b)(3)(B), (b)(3)(C) and (b)(3)(D) [Effective 7-1-95]**
Amends the circumstances under which an individual may be disqualified from receiving unemployment benefits.
5. **K.S.A. 44-709(j) [Effective 7-1-95]**
Added a collateral estoppel provision.
6. **K.S.A. 44-710a(a)(1)(B)(i) and K.S.A. 44-710a(a)(3)(A) & (C)[Effective for calendar years 1995 and 1996]**
Creates a tax moratorium for Contributing Employers.
7. **K.S.A. 44-710a(e) [Effective 7-1-95]**
Amends the date of the trust fund balance for the annual certification.
8. **K.S.A. 44-717(a) [Effective 4-6-95]**
Reduces the interest rate for delinquent employers to 1.0 percent a month on any quarter after January 1, 1995.

1994 LAW CHANGES

1. **K.S.A. 44-703(i)(1)(C) & (i)(4) [Effective 7-1-94]**
Removes from the definition of employment member managers as well as any members carrying out their duties as members.
2. **K.S.A. 44-704(e)(1)(c) and (e)(3) [Effective 7-1-94]**
Includes severance pay as wages in the calculation to reduce benefits if the severance pay is paid as scheduled

and all other employment benefits within the employer's control continue as though the severance had not occurred.

1993 LAW CHANGES

1. **K.S.A. 44-704(e) [Effective 7-1-93]**
Remove the \$47.00 limit a claimant may earn before reduction in the weekly benefit amount.
2. **K.S.A. 44-704a(a)(2)(c) [Effective 7-1-93]**
Provides an additional trigger-on to extended benefits when the total unemployment rate equals or exceeds 6.5% for three months and 110% of average for the two prior years in this state.
3. **K.S.A. 44-704a(e) [Effective 7-1-93]**
Modifies total amount of extended benefits which claimant would receive depending on severity of unemployment rate.
4. **K.S.A. 44-704a(f)(4) [Effective 7-1-93]**
Allows payment of extended benefits to claimants if base period earnings equals or exceeds 40 times the weekly benefit amount.
5. **K.S.A. 44-704b(b) [Effective after 6-30-93 through 1-1-95]**
Allows claimant eligibility and qualification tests under extended benefits to be identical to the state's regular program.
6. **K.S.A. 44-706(b) [Effective 7-1-93]**
Expands this section to permit better administration of the treatment of instances relating to use of alcohol or drugs or refusal to take chemical tests when mandated by the laws or rules and regulations of federal, state or other subdivisions.
7. **K.S.A. 44-710a(a)(3) [Effective 1-1-94]**
Allows a 0.10 percent reduction in the planned yield on total wages in column B of schedule III. This reduction reduces total income to the trust fund.
8. **K.S.A. 44-710a(e) [Effective 1-1-94]**
The Secretary of Labor is required to file an annual report to the Governor and the Employment Security Advisory Council detailing the conditions of the Kansas Employment Security Trust Fund.

1992 LAW CHANGES

1. **K.S.A. 44-703(g) [Effective 7-1-92]**
Added limited liability company to the organizations included as an employing unit.
2. **K.S.A. 44-703(i)(1)(C) [Effective 7-1-92]**
Added as statutory employees, any active member or manager of a limited liability company.
3. **K.S.A. 44-706(b)(2) [Effective 7-1-92]**
Added to disqualifications for misconduct the use, possession, or impairment by an alcoholic beverage or a cereal malt beverage while working.
4. **K.S.A. 44-717(k) [Effective 7-1-92]**
Any member or manager of a limited liability company who willfully fails to pay the amount of contributions due may be held personally liable for the contributions, penalties, and interest due.

5. **K.S.A. 44-757(a)(1) [Effective 7-1-92]**

The minimum number of employees in the affected unit is reduced from four to two.

6. **K.S.A. 44-757(d)(7) [Effective 7-1-92]**

For the shared work plan to be approved, the employer must file all past and current period reports required by the employment security law and pay all contributions, benefit cost payments, or payments in lieu of contributions due for all past and current periods.

7. **K.S.A. 44-757(d)(8) [Effective 7-1-92]**

Employers eligible for the shared work plan, who are contributing employers, must be eligible for a rate computation and cannot have a negative balance if a rated governmental employer, they must be eligible for a rate computation.

1991 LAW CHANGES

1. **K.S.A. 44-704(c) [Effective 7-1-91]**

Removes the monetary upper limit on the maximum weekly benefit amount.

2. **K.S.A. 44-704(e)(1) & (2) [Effective 7-1-91]**

Defines remuneration received as wages which is used to reduce a claimant's weekly benefit amount.

3. **K.S.A. 44-706(b)(2) & (3) [Effective 7-1-91]**

Adds the use, possession, or impairment by non-prescribed controlled substances while working and continued worker absenteeism after written notice from the employer to disqualification for misconduct.

4. **K.S.A. 44-714(g) [Effective 7-1-91]**

Allows the use of interrogatories in hearings and in the administration of the employment security law.

5. **K.S.A. 44-714(h)(1) [Effective 7-1-91]** Changes the methods of obtaining good service when serving a subpoena on an individual.

6. **K.S.A. 44-716a(a) & (d) [Effective 7-1-91]**

Changes the procedures for using the funds in the special employment security fund.

7. **K.S.A. 44-719(d)(2) [Effective 7-1-91]**

Allows the charging and collection of interest at the rate of 1.5% per month or fraction of a month on benefits erroneously paid to a claimant.

8. **K.S.A. 44-757(a)(7) & (r) [Effective 7-1-91]**

Includes the secretary's designee in the definition of the "secretary" and removes the April 1, 1992 termination date of the shared work plan.

1990 LAW CHANGES

1. **K.S.A. 44-703(a)(3) [Effective 7-1-90]**

Defines total wages.

2. **K.S.A. 44-703(i)(4)(T) [Effective 7-1-90]**

Provides an exemption for service not in the course of trade or business (casual labor).

3. **K.S.A. 44-703(ff) [Effective 7-1-90]**

Defines lessor employing unit.

4. **K.S.A. 44-703(gg) [Effective 7-1-90]**
Defines client lessee.
5. **K.S.A. 44-709(f) [Effective 7-1-90]**
Provides for a four year term for board members and if the board members do not appoint the public member, the governor shall make the appointment.
6. **K.S.A. 44-710a(a)(2)(D) [Effective 7-1-90]**
Increased the number of rate groups in the experience rating computation from 21 to 51.
7. **K.S.A. 44-710a(C) [Effective 7-1-90]**
Increased the number of voluntary payment options available to eligible employers from 2 to 5.
8. **K.S.A. 44-710e(b) [Effective 5-31-90]**
Repealed a provision that required any taxes levied by counties and cities to fund unemployment benefits to be exempt from any aggregate tax limitation.
9. **K.S.A. 44-714(c)(2) [Effective 5-31-90]**
Amended the law to exempt individuals soliciting and receiving contributions for their own personal campaign as a candidate for a nonpartisan elective public office from the prohibition that applies to employees engaged in the administration of the Kansas Employment Security Law.
10. **K.S.A. 44-757(h) [Effective 4-12-90]**
Changed the date a shared work plan may become effective.
11. **K.S.A. 44-758 [Effective 7-1-90]**
Provides records, reporting, and liability requirements for lessor employing units and client lessees engaged in employee leasing.

1989 LAW CHANGES

1. **K.S.A. 44-703(h)(4)(B) [Effective 7-1-89]**
Establishes liability for an employing unit which acquires less than 100% of an employer's annual payroll and the successor employing unit is controlled substantially by the same interests as the predecessor employer.
2. **K.S.A. 44-703(o) [Effective 7-1-89]**
Specifies how back pay awards or settlements shall be allocated and reported as wages.
3. **K.S.A. 44-704a(d) & (e) [Effective 7-1-89]**
Reduces the amount of the state's share paid on extended benefits to match the reduction required under Section 252 of the Federal Balanced Budget and Emergency Control Act of 1985.
4. **K.S.A. 44-706(a)(4) [Effective 4-13-89]**
Allows a spouse not to be disqualified from unemployment benefits if the leaving is to accompany their spouse to another area who has new work in the area.
5. **K.S.A. 44-706(r) [Effective 4-13-89]**
Allows individuals not to be disqualified from unemployment benefits when attending school at night or attending classes that do not substantially restrict their eligibility.
6. **K.S.A. 44-706(s) [Effective 7-1-89]**
Provides for individuals who receive a back pay award or settlement to be disqualified from unemployment benefits for the week in which such wages are allocated.

7. **K.S.A. 44-710(e)(2)(F) [Effective 7-1-89]**
Increases the amount of a reimbursing employer's bond to 5.4% of taxable payroll.
8. **K.S.A. 44-710a(b)(3) [Effective 7-1-89]**
Requires partial transfer of the experience rating factors from the predecessor to the partial successor when mandatory partial successorship is held.

1988 LAW CHANGES

1. **K.S.A. 44-703(i)(4)(S) [Effective 7-1-88]**
Services performed as "contract" oil and gas pumper is exempt.
2. **K.S.A. 44-703(o)(4) & (13) [Effective 7-1-88]**
Payments made under a simplified employee pension or cafeteria plan as defined in the Internal Revenue Code are excluded from the term "wages." Any benefit provided to or on behalf of an employee is excluded if, at the time of payment, it is reasonable to believe that the employee will be able to exclude such benefit from income sections 74(c) -- Employer Achievement Awards, 117 -- Qualified Scholarships, or 132 -- Certain Fringe Benefits of the Federal Internal Revenue Code.
3. **K.S.A. 44-705 [Effective 4-1-89]**
Provides for a Shared Work Unemployment Insurance Compensation Program.
4. **K.S.A. 44-706(r) [Effective 7-1-88]**
An individual is disqualified from benefits for any week the individual is registered at and attending an established school, training facility, or other educational institution.

1987 LAW CHANGES

1. **K.S.A. 44-703(i)(4)(R) [Effective 7-1-87]**
Exempts the services of a motion picture "extra" for less than 14-days during a calendar year.
2. **K.S.A. 44-706(p) [Effective 4-30-87]**
Provides a disqualification between academic terms for workers employed by a private contractor to transport students for school related functions provided the worker has assurance of employment for the next academic year.
3. **K.S.A. 44-706(q) [Effective 4-30-87]**
Provides a disqualification between academic terms for employees of governmental entities and non-profit organizations who provide services to educational institutions if the employee has assurance of employment for the next academic year.
4. **K.S.A. 44-710(c)(G)(3) & (4) [Effective 7-1-87]**
Establishes a response time of 10-days for all employer notices.
5. **K.S.A. 44-710(e)(z)(F) [Effective 7-1-87]**
A cash bond or deposit may be required from any reimbursing employer delinquent in filing tax returns or making reimbursing payments.

1986 LAW CHANGES

1. **K.S.A. 44-703(o) thru K.S.A. 44-703(o)(13) [Effective 7-1-86]**
 - a. Provides that when wages are not paid within 21-days following the end of the pay period when the compensation was earned, they will be considered paid and must be reported as though they were paid.
 - b. Provides that gratuities, including tips received from third parties, shall be considered wages when reported in writing to the employer by the employee.
 - c. Provides that sickness and accident disability payments shall be taxable. Payments made after the expiration of six months following the last month in which the employee worked are not taxable.
 - d. Provides that death benefits to employees are not taxable.
 - e. Excludes from the term “wages”:
 1. Payments made to or on behalf of an employee for trusts, annuity plans, bond purchase plans, and pension plans providing certain restrictions are met.
 2. Employer payment of the employee’s share of social security for domestic and agricultural workers.
 3. Remuneration paid in any medium other than cash to an employee for service not in the course of the employer’s business.
 4. Remuneration paid to or on behalf of an employee for moving expenses.
 5. Payments for death or retirement disability by an employer for an employee.
 6. Remuneration for agricultural labor paid in any medium other than cash.
 7. Payment by an employer for employees as a qualified group legal service plan.
 8. Payments made to or for the benefit of an employee for educational assistance and dependent care assistant programs.
 9. Meals and lodging furnished for an employee for the convenience of the employer.
 10. Payment made by an employer to a survivor or the estate of a former employee after the calendar year in which the employee died.
 - f. Provides that employer contributions to 401 K plans are taxable.
 - g. Provides that employer contributions into a retirement plan actually paid by a state government or political subdivision thereof shall be considered employer contributions.
 - h. Provides that any amount deferred under a non-qualified deferred compensation plan shall be taken into account as of the latter of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount.
2. **K.S.A. 44-704(e) [Effective 7-1-86]**

Increase benefit amount payable to claimants before deduction is made for partial employment.
3. **K.S.A. 44-706(b) [Effective 7-1-86]**

Breach of duty is now “Misconduct” and penalty changed. Gross misconduct is redefined and penalty is changed.
4. **K.S.A. 44-706(b)(1) [Effective 7-1-86]**

Establishes a response time of 10-days to the Employer Notice.
5. **K.S.A. 44-706(c) [Effective 7-1-86]**

Revises penalty for refusing suitable work.
6. **K.S.A. 44-709(i) [Effective 7-1-86]**

Provides that the Board of Review is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.
7. **K.S.A. 44-710(b) [Effective 7-1-86]**

Provides that the Secretary of Labor is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

8. **K.S.A. 44-714(f) [Effective 7-1-86]**
Provides confidentiality of appeal hearing transcripts.
9. **K.S.A. 44-716a(a) [Effective 7-1-86]**
Allows monies from the special employment security fund to be used to finance activities deemed necessary.
10. **K.S.A. 44-717(a) [Effective 7-1-86]**
Revises the penalty and interest on past due Employer Quarterly Wage Reports and Contribution Returns:
 - a. Penalty shall be 0.05% per month or portion of a month of the total wages paid during a quarter, however, the penalty shall not be less than \$25.00 or greater than \$200.00.
 - b. Interest rate increased from 0.8% to 1.5% per month or fraction thereof.
11. **K.S.A. 44-717(b)(3) [Effective 7-1-86]**
Prime contractors are directly liable for unpaid tax of their subcontractors unless the prime contractors require the subcontractors to post a good and sufficient bond guaranteeing payment.
12. **K.S.A. 44-717(e)(2) [Effective 7-1-86]**
Allows the Department of Labor to levy on liens.
13. **K.S.A. 44-717(j) [Effective 7-1-86]**
Allows for a cash deposit or bond from employers which are two or more quarters delinquent in filing quarterly tax returns.
14. **K.S.A. 44-717(k) [Effective 7-1-86]**
Officer, major stockholder, or any person in charge of the affairs of a corporation may be personally held liable for willful failure to pay.
15. **K.S.A. 44-719(e) [Effective 7-1-86]**
Provides for a penalty equal to the amount of taxes evaded or not paid for any person which willfully fails to pay.
16. **K.S.A. 44-719 [Effective 7-1-86]**
Overpayments in case of administrative inadvertence may be waived.

1985 LAW CHANGES

1. **K.S.A. 44-704(c) [Effective 7-1-85]**
Establishes maximum weekly benefit amount for FY 1986 of \$190.00.
2. **K.S.A. 44-706(a) [Effective 7-1-85]**
Revises penalties for voluntary quits.
3. **K.S.A. 44-718 [Effective 7-1-85]**
Removes "child" from child support enforcement agency.

1984 LAW CHANGES

1. **K.S.A. 44-703(i)(4)(c) [Effective 5-24-84]**
Exempts a child under age 21 in the employ of his father or mother.

2. **K.S.A. 44-703(i)(4)(o) [Effective 5-24-84]**
Removes the “under age 22” exemption for students enrolled in a work study program.
3. **K.S.A. 44-703(I)(4)(Q) [Effective 5-24-84]**
Exempts the services of a licensed real estate agent provided certain restrictions are met.
4. **K.S.A. 44-703(o) [Effective 5-24-84]**
Excludes the value of meals furnished by an employer on his premises and for his convenience from the definition of wages.
5. **K.S.A. 44-703(o)(1) [Effective 1-1-84]**
Taxable wage base increased to \$8,000.00.
6. **K.S.A. 44-703(j)(4) [Effective 5-24-84]**
Removes from the definition of institutions of higher education any post-secondary institution operated by the federal governmental or agency thereof.
7. **K.S.A. 44-703(v) [Effective 5-24-84]**
Removes from the definition of “educational institution” any private for profit institution.
8. **K.S.A. 44-704(c) [Effective 1-1-84]**
Establishes weekly benefit amount for FY 1985 of \$175.00.
9. **K.S.A. 44-706(k) [Effective 5-24-84]**
Provides for equal disqualification for employees of educational institutions.
10. **K.S.A. 44-706(o) [Effective 5-24-84]**
Provisions of 44-706(i) and (k) apply equally to “educational service agency” as educational institution.
11. **K.S.A. 44-710a(a)(2)(C) [Effective 5-24-84]**
Provides an employer to be assigned rate group 21 following a calendar year of inactivity (recaptured employers).
12. **K.S.A. 44-710(a)(2)(D) [Effective 1-1-84]**
Provides for the computation of tax rates in the year the wage base changes.

1983 LAW CHANGES

1. **K.S.A. 44-703(h)(4) [Effective 2-24-83]**
Change in wording of the law to coincide with the guidelines on successorship contained in the field manual.
2. **K.S.A. 44-703(o) [Effective 1-1-83]**
Taxable wage base changed to \$7,000.00.
3. **K.S.A. 44-703(dd) [Effective 2-24-83]**
Defines successor employer.
4. **K.S.A. 44-703(ee) [Effective 2-24-83]**
Defines predecessor employer.
5. **K.S.A. 44-703(b)(3) [Effective 2-24-83]**
Provides for the rounding down of benefits to the next lower multiple of \$1.00 for claims filed after 6-30-83.

6. **K.S.A. 44-704(c) [Effective 2-24-83]**
Caps the maximum benefit amount at \$163.00 per week.
7. **New Section 4 [Effective 2-24-83]**
Provides for an annual surcharge of 20% effective 1-1-83 for contributing and rated governmental employers. Annual surcharge will be continued in 1984 if the trust fund balance falls below \$80,000,000.00.

For years 1983 and 1984, a quarterly surcharge will be assessed if the trust fund balance falls below \$35,000,000.00 during any quarter.
8. **K.S.A. 44-710(a) [Effective 2-24-83]**
 - a. Adds 1.00% to all industry rates for 1983 and thereafter.
 - b. Negative account balance employers will pay a rate of 5.4% plus the surcharge of 20%.
 - c. Schedule II surcharge on negative account removed from the law and replaced with an expanded new Schedule II.
 - d. Maximum tax rate increased from 4.0% to 5.4%.
9. **K.S.A. 44-710(a)(b)(1) thru K.S.A. 44-710(a)(b)(5) [Effective 2-24-83]**
 - a. Eliminates mandatory transfer of experience rating factors except when the same interests are involved.
 - b. Provides for the successor to make a voluntary application to receive experience rating factors, if application is made in writing within 120-days of date of transfer.
 - c. Changes from 30-days to 120-days -- the time limit to make application for a partial transfer.
 - d. Removes the separate and distinct establishment from the partial transfer.
 - e. Adds a provision for a liquidating account.
10. **K.S.A. 44-711(d) & (e) [Effective 2-24-83]**
 - a. Provides for termination of an account upon total transfer.
 - b. Provides for termination due to successorship.
11. **K.S.A. 44-714(p) [Effective 2-24-83]**
Allows the agency to charge for documents.
12. **K.S.A. 44-710i [Effective 2-24-83]**
Provides that related corporations with concurrent employment to elect one of the related corporations to act as a common paymaster for all of the related corporations.
13. **K.S.A. 44-710g [Effective 2-24-83]**
Allows governmental entity to issue no-fund warrants in amounts sufficient to make payments to the employment security fund.

KANSAS EMPLOYMENT SECURITY LAW

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Article 7.

EMPLOYMENT SECURITY LAW

44-701. Short title. This act shall be known and may be cited as the "employment security law."

History: L. 1937, ch. 255, § 1; L. 1949, ch. 288, § 1; March 5.

44-702. Declaration of state public policy. As a guide to the interpretation and application of this act, the public policy of this state is declared to be as follows: Economic insecurity, due to unemployment, is a serious menace to health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor-relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed.

History: L. 1937, ch. 255, § 2; March 29.

44-703. Definitions. As used in this act, unless the context clearly requires otherwise:

(a)(1) "Annual payroll" means the total amount of wages paid or payable by an employer during the calendar year.

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three calendar years immediately preceding the computation date as hereinafter defined if the employer has been continuously subject to contributions during those three calendar years and has paid some wages for employment during each of such years. In determining contribution rates for the calendar year, if an employer has not been continuously subject to contribution for the three calendar years immediately preceding the computation date but has paid wages subject to contributions during only the two calendar years

immediately preceding the computation date, such employer's "average annual payroll" shall be the average of the payrolls for those two calendar years.

(3) "Total wages" means the total amount of wages paid or payable by an employer during the calendar year, including that part of remuneration in excess of the limitation prescribed as provided in subsection (o) (1) of this section.

(b) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that the base period in respect to combined wage claims means the base period as defined in the law of the paying state.

(1)(A) If an individual lacks sufficient base period wages in order to establish a benefit year in the matter set forth above and satisfies the requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of K.S.A. 44-703, and amendments thereto, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subsection, "alternative base period" means the last four completed quarters immediately preceding the date the qualifying injury occurred. In the event the wages in the alternative base period have been used on a prior claim, then they shall be excluded from the new alternative base period.

(1)(B) If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above, the claimant shall have an alternative base period substituted for the current base period. For the purposes of this subsection, "alternative base period" means eligibility shall be determined using a base period that consists of the four most recent completed calendar quarters preceding the start of the benefit year.

(2) For the purposes of this chapter, the term "base period" includes the alternative base period.

(c)(1) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to such individual's unemployment.

(2) "Regular benefits" means benefits payable to an individual under this act or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(d) "Benefit year" with respect to any individual, means the period beginning with the first day of the

first week for which such individual files a valid claim for benefits, and such benefit year shall continue for one full year. In the case of a combined wage claim, the benefit year shall be the benefit year of the paying state. Following the termination of a benefit year, a subsequent benefit year shall commence on the first day of the first week with respect to which an individual next files a claim for benefits. When such filing occurs with respect to a week which overlaps the preceding benefit year, the subsequent benefit year shall commence on the first day immediately following the expiration date of the preceding benefit year. Any claim for benefits made in accordance with subsection (a) of K.S.A. 44-709 and amendments thereto shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has been paid wages for insured work as required under subsection (e) of K.S.A. 44-705 and amendments thereto. Whenever a week of unemployment overlaps two benefit years, such week shall, for the purpose of granting waiting-period credit or benefit payment with respect thereto, be deemed to be a week of unemployment within that benefit year in which the greater part of such week occurs.

(e) "Commissioner" or "secretary" means the secretary of labor.

(f)(1) "Contributions" means the money payments to the state employment security fund which are required to be made by employers on account of employment under K.S.A. 44-710 and amendments thereto, and voluntary payments made by employers pursuant to such statute.

(2) "Payments in lieu of contributions" means the money payments to the state employment security fund from employers which are required to make or which elect to make such payments under subsection

(e) of K.S.A. 44-710 and amendments thereto.

(g) "Employing unit" means any individual or type of organization, including any partnership, association, limited liability company, agency or department of the state of Kansas and political subdivisions thereof, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign including nonprofit corporations, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representatives of a deceased person, which has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a

single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the employment.

(h) "Employer" means:

(1)(A) Any employing unit for which agricultural labor as defined in subsection (w) of this section is performed and which during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor or for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.

(B) For the purpose of this subsection (h)(1), any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(i) Such crew leader holds a valid certificate of registration under the federal migrant and seasonal agricultural workers protection act or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment or any other mechanized equipment, which is provided by such crew leader; and

(ii) such individual is not in the employment of such other person within the meaning of subsection (i) of this section.

(C) For the purpose of this subsection (h)(1), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on the crew leader's own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(D) For the purposes of this subsection (h)(1) "crew

leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays, either on such individual's own behalf or on behalf of such other person, the individuals so furnished by such individual for the service in agricultural labor performed by them; and

(iii) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(2)(A) Any employing unit which: (i) for calendar year 2007 and each calendar year thereafter: (i) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of \$1,500 or more, (ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, had in employment at least one individual, whether or not the same individual was in employment in each such day or (iii) elects to have an unemployment tax account established at the time of initial registration in accordance with subsection (c) of K.S.A. 44-711, and amendments thereto.

(B) Employment of individuals to perform domestic service or agricultural labor and wages paid for such service or labor shall not be considered in determining whether an employing unit meets the criteria of this subsection (h)(2).

(3) Any employing unit for which service is employment as defined in subsection (i)(3)(E) of this section.

(4)(A) Any employing unit, whether or not it is an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to (i) substantially all of the employing enterprises, organization, trade or business, or (ii) substantially all the assets, of another employing unit which at the time of such acquisition was an employer subject to this act;

(B) any employing unit which is controlled substantially, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests, whether or not such interest or interests are an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to a portion of an employer's annual payroll, which is less than 100% of such employer's annual payroll, and which intends to continue the acquired portion as a going business.

(5) Any employing unit which paid cash remuneration of \$1,000 or more in any calendar quarter in the current

or preceding calendar year to individuals employed in domestic service as defined in subsection (aa) of this section.

(6) Any employing unit which having become an employer under this subsection (h) has not, under subsection (b) of K.S.A. 44-711 and amendments thereto, ceased to be an employer subject to this act.

(7) Any employing unit which has elected to become fully subject to this act in accordance with subsection (c) of K.S.A. 44-711 and amendments thereto.

(8) Any employing unit not an employer by reason of any other paragraph of this subsection (h), for which within either the current or preceding calendar year services in employment are or were performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or which, as a condition for approval of this act for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, to be an "employer" under this act.

(9) Any employing unit described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income tax under section 501(a) of the code that had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(i) "Employment" means:

(1) Subject to the other provisions of this subsection, service, including service in interstate commerce, performed by

(A) Any active officer of a corporation; or

(B) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee, subject to provisions of K.S.A. 44-703(i)(3)(D), and amendments thereto; or

(C) any individual other than an individual who is an employee under subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services for remuneration for any person:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for such individual's principal; or

(ii) as a traveling or city salesman, other than as an

agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of subsection (i)(1)(C), the term "employment" shall include services described in paragraphs (i) and (ii) above only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(c) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2) The term "employment" shall include an individual's entire service within the United States, even though performed entirely outside this state if,

(A) The service is not localized in any state, and

(B) the individual is one of a class of employees who are required to travel outside this state in performance of their duties, and

(C) the individual's base of operations is in this state, or if there is no base of operations, then the place from which service is directed or controlled is in this state.

(3) The term "employment" shall also include:

(A) Services performed within this state but not covered by the provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(B) Services performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act only if the individual performing such services is a resident of this state and the secretary approved the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(C) Services covered by an arrangement pursuant to subsection (l) of K.S.A. 44-714 and amendments

thereto between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the secretary has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(D) Services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to this act if the business for which activities of the individual are performed retains not only the right to control the end results of the activities performed, but the manner and means by which the end result is accomplished.

(E) Service performed by an individual in the employ of this state or any instrumentality thereof, any political subdivision of this state or any instrumentality thereof, or in the employ of an Indian tribe, as defined pursuant to section 3306(u) of the federal unemployment tax act, any instrumentality of more than one of the foregoing or any instrumentality which is jointly owned by this state or a political subdivision thereof or Indian tribes and one or more other states or political subdivisions of this or other states, provided that such service is excluded from "employment" as defined in the federal unemployment tax act by reason of section 3306(c)(7) of that act and is not excluded from "employment" under subsection (i)(4)(A) of this section. For purposes of this section, the exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also be applicable to services performed in the employ of an Indian tribe.

(F) Service performed by an individual in the employ of a religious, charitable, educational or other organization which is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act, and is not excluded from employment under paragraphs (I) through (M) of subsection (i)(4).

(G) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States except in Canada, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subsection (i)(2) or subsection (i)(3) or the parallel provisions of another state's law), if:

(i) The employer's principal place of business in the United States is located in this state; or

(ii) the employer has no place of business in the United States, but

(a) The employer is an individual who is a resident of this state; or

(b) the employer is a corporation which is organized under the laws of this state; or

(c) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of paragraphs (i) and (ii) above of this subsection (i)(3)(G) are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(H) An "American employer," for purposes of subsection (i)(3)(G), means a person who is:

(i) An individual who is a resident of the United States; or

(ii) a partnership if 2/3 or more of the partners are residents of the United States; or

(iii) a trust, if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(I) Notwithstanding subsection (i)(2) of this section, all service performed by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, if the operating office, from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(J) Notwithstanding any other provisions of this subsection (i), service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this act.

(K) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of \$1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

(4) The term "employment" shall not include:

(A) Service performed in the employ of an employer specified in subsection (h)(3) of this section if such service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) as a member of a legislative body, or a member of the judiciary, of a state, political subdivision or of an Indian tribe;

(iii) as a member of the state national guard or air national guard;

(iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(v) in a position which, under or pursuant to the laws of this state or tribal law, is designated as a major nontenured policymaking or advisory position or as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;

(B) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(C) service performed by an individual in the employ of such individual's son, daughter or spouse, and service performed by a child under the age of 21 years in the employ of such individual's father or mother;

(D) service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act, except that to the extent that the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this state shall not be certified for any year by the federal security agency under section 3304(c) of the federal internal revenue code of 1986, the payments required of such instrumentalities with respect to such year shall be refunded by the secretary from the fund in the same manner and within the same period as is provided in subsection (f) of K.S.A. 44-717 and amendments thereto with respect to contributions erroneously collected;

(E) service covered by an arrangement between the secretary and the agency charged with the

administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

(F) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(G) service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(H) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal internal revenue code of 1986 (other than an organization described in section 401(a) or under section 521 of such code) if the remuneration for such service is less than \$50. In construing the application of the term "employment," if services performed during 1/2 or more of any pay period by an individual for the person employing such individual constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than 1/2 of any such pay period by an individual for the person employing such individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection (i)(4)(H) the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing such individual. This subsection (i)(4)(H) shall not be applicable with respect to services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(I) services performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(J) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of such individual's ministry or by a member of a religious order in the exercise of duties required by

such order;

(K) service performed in a facility conducted for the purpose of carrying out a program of:

(i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

(ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(L) service performed as part of an employment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training;

(M) service performed by an inmate of a custodial or correctional institution;

(N) service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university;

(O) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection (i)(4)(O) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(P) service performed in the employ of a hospital licensed, certified or approved by the secretary of health and environment, if such service is performed by a patient of the hospital;

(Q) services performed as a qualified real estate agent. As used in this subsection (i)(4)(Q) the term "qualified real estate agent" means any individual who is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act and for whom:

(i) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(ii) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes;

(R) services performed for an employer by an extra in connection with any phase of motion picture or television production or television commercials for less than 14 days during any calendar year. As used in this subsection, the term "extra" means an individual who pantomimes in the background, adds atmosphere to the set and performs such actions without speaking and "employer" shall not include any employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code;

(S) services performed by an oil and gas contract pumper. As used in this subsection (i)(4)(S), "oil and gas contract pumper" means a person performing pumping and other services on one or more oil or gas leases, or on both oil and gas leases, relating to the operation and maintenance of such oil and gas leases, on a contractual basis for the operators of such oil and gas leases and "services" shall not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(T) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$200 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(ii) such individual was regularly employed, as determined under subparagraph (i), by such employer in the performance of such service during the preceding calendar quarter.

Such excluded service shall not include any services performed for an employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is

exempt from income taxation under section 501(a) of the code;

(U) service which is performed by any person who is a member of a limited liability company and which is performed as a member or manager of that limited liability company; and

(V) services performed as a qualified direct seller. The term "direct seller" means any person if:

(i) Such person:

(a) is engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise rather than in a permanent retail establishment; or

(b) is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment;

(ii) substantially all the remuneration whether or not paid in cash for the performance of the services described in subparagraph (i) is directly related to sales or other output including the performance of services rather than to the number of hours worked;

(iii) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes;

(iv) for purposes of this act, a sale or a sale resulting exclusively from a solicitation made by telephone, mail, or other telecommunications method, or other nonpersonal method does not satisfy the requirements of this subsection;

(W) service performed as an election official or election worker, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;

(X) service performed by agricultural workers who are aliens admitted to the United States to perform labor pursuant to section 1101 (a)(15)(H)(ii)(a) of the immigration and nationality act; and

(Y) service performed by an owner-operator of a motor vehicle that is leased or contracted to a licensed motor carrier with the services of a driver and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. §3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax

act 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 et seq. Employees or agents of the owner-operator shall not be considered employees of the licensed motor carrier for purposes of employment security taxation or compensation. As used in this subsection (Y), the following definitions apply: (i) "Motor vehicle" means any automobile, truck-trailer, semi-trailer, tractor, motor bus or any other self-propelled or motor-driven vehicle used upon any of the public highways of Kansas for the purpose of transporting persons or property; (ii) "licensed motor carrier" means any person, firm, corporation or other business entity that holds a certificate of convenience and necessity or a certificate of public service from the state corporation commission or is required to register motor carrier equipment pursuant to 49 U.S.C. § 14504; and (iii) "owner-operator" means a person, firm, corporation or other business entity that is the owner of a single motor vehicle that is driven exclusively by the owner under a lease agreement or contract with a licensed motor carrier,

(j) "Employment office" means any office operated by this state and maintained by the secretary of labor for the purpose of assisting persons to become employed.

(k) "Fund" means the employment security fund established by this act, to which all contributions and reimbursement payments required and from which all benefits provided under this act shall be paid and including all money received from the federal government as reimbursements pursuant to section 204 of the federal-state extended compensation act of 1970, and amendments thereto.

(l) "State" includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the District of Columbia and the Virgin Islands.

(m) "Unemployment." An individual shall be deemed "unemployed" with respect to any week during which such individual performs no services and with respect to which no wages are payable to such individual, or with respect to any week of less than full-time work if the wages payable to such individual with respect to such week are less than such individual's weekly benefit amount.

(n) "Employment security administration fund" means the fund established by this act, from which administrative expenses under this act shall be paid.

(o) "Wages" means all compensation for services, including commissions, bonuses, back pay and the cash value of all remuneration, including benefits, paid in

any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual which has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21st day after the end of that pay period. Effective January 1, 1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total \$20 or more for a calendar month whether the tips are received directly from a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill. Notwithstanding the other provisions of this subsection (o), wages paid in back pay awards or settlements shall be allocated to the week or weeks and reported in the manner as specified in the award or agreement, or, in the absence of such specificity in the award or agreement, such wages shall be allocated to the week or weeks in which such wages, in the judgment of the secretary, would have been paid. The term "wages" shall not include:

(1) That part of the remuneration which has been paid in a calendar year to an individual by an employer or such employer's predecessor in excess of \$3,000 for all calendar years prior to 1972, in excess of \$4,200 for the calendar years 1972 to 1977, inclusive, in excess of \$6,000 for calendar years 1978 to 1982, inclusive, in excess of \$7,000 for the calendar year 1983, and in excess of \$8,000 with respect to employment during any calendar year following 1983, except that if the definition of the term "wages" as contained in the federal unemployment tax act is amended to include remuneration in excess of \$8,000 paid to an individual by an employer under the federal act during any calendar year, wages shall include remuneration paid in a calendar year to an individual by an employer subject to this act or such employer's predecessor with respect to employment during any calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this subsection (o)(1), the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

(2) the amount of any payment (including any

amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of such employee's dependents under a plan or system established by an employer which makes provisions for employees generally, for a class or classes of employees or for such employees or a class or classes of employees and their dependents, on account of (A) sickness or accident disability, except in the case of any payment made to an employee or such employee's dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workers compensation law. Any third party which makes a payment included as wages by reason of this subparagraph (2)(A) shall be treated as the employer with respect to such wages, or (B) medical and hospitalization expenses in connection with sickness or accident disability, or (C) death;

(3) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) any payment made to, or on behalf of, an employee or such employee's beneficiary:

(A) From or to a trust described in section 401(a) of the federal internal revenue code of 1986 which is exempt from tax under section 501(a) of the federal internal revenue code of 1986 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust;

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the federal internal revenue code of 1986;

(C) under a simplified employee pension as defined in section 408(k)(1) of the federal internal revenue code of 1986, other than any contribution described in section 408(k)(6) of the federal internal revenue code of 1986;

(D) under or to an annuity contract described in section 403(b) of the federal internal revenue code of 1986, other than a payment for the purchase of such contract which was made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise;

(E) under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the federal internal revenue code of 1986;

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subparagraph to take into account some portion or all of the increase in the cost of living, as determined by the secretary of labor, since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the federal employee retirement income security act of 1974; or

(G) under a cafeteria plan within the meaning of section 125 of the federal internal revenue code of 1986;

(5) the payment by an employing unit (without deduction from the remuneration of the employee) of the tax imposed upon an employee under section 3101 of the federal internal revenue code of 1986 with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(7) remuneration paid to or on behalf of an employee if and to the extent that at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the federal internal revenue code of 1986 relating to moving expenses;

(8) any payment or series of payments by an employer to an employee or any of such employee's dependents which is paid: (A) Upon or after the termination of an employee's employment relationship because of (i) death or (ii) retirement for disability; and

(B) under a plan established by the employer which makes provisions for employees generally, a class or classes of employees or for such employees or a class or classes of employees and their dependents, other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(9) remuneration for agricultural labor paid in any medium other than cash;

(10) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 129 of the federal internal revenue code of 1986 which relates to dependent care assistance programs;

(11) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such

furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the federal internal revenue code of 1986;

(12) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(13) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117 or 132 of the federal internal revenue code of 1986;

(14) any payment made, or benefit furnished, to or for the benefit of an employee, if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the federal internal revenue code of 1986 relating to educational assistance to the employee.

(15) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d) of the federal internal revenue code of 1986 relating to health savings accounts.

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term "wages": (1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the federal internal revenue code of 1986, to the extent that such contribution is not included in gross income by reason of section 402(a)(8) of the federal internal revenue code of 1986; or (2) any amount treated as an employer contribution under section 414(h)(2) of the federal internal revenue code of 1986.

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this section as of the later of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this paragraph, and the income attributable thereto, shall not thereafter be treated as wages for purposes of this section. For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (o)(4).

(p) "Week" means such period or periods of seven consecutive calendar days, as the secretary may by rules and regulations prescribe.

(q) "Calendar quarter" means the period of three consecutive calendar months ending March 31, June 30, September 30 or December 31, or the equivalent thereof as the secretary may by rules and regulations prescribe.

(r) "Insured work" means employment for employers.

(s) "Approved training" means any vocational training course or course in basic education skills, including a job training program authorized under the federal workforce investment act of 1998, approved by the secretary or a person or persons designated by the secretary.

(t) "American vessel" or "American aircraft" means any vessel or aircraft documented or numbered or otherwise registered under the laws of the United States; and any vessel or aircraft which is neither documented or numbered or otherwise registered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(u) "Institution of higher education," for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection (u), all colleges and universities in this state are institutions of higher education for purposes of this section, except that no college, university, junior college or other postsecondary school or institution which is operated by the federal government or any agency thereof shall be an institution of higher education for purposes of the employment security law.

(v) "Educational institution" means any institution of higher education, as defined in subsection (u) of this section, or any institution, except private for

profit institutions, in which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher and which is approved, licensed or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school or to an Indian tribe in the operation of an educational institution. The courses of study or training which an educational institution offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

(w)(1) "Agricultural labor" means any remunerated service:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife.

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operating, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section (15)(g) of the agricultural marketing act, as amended (46 Stat. 1500, sec. 3; 12 U.S.C. 1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(D)(i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than 1/2 of the commodity with respect to which such service is performed;

(ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (i) above of this subsection (w)(1)(D),

but only if such operators produced more than 1/2 of the commodity with respect to which such service is performed;

(iii) the provisions of paragraphs (i) and (ii) above of this subsection (w)(1)(D) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(E) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(2) "Agricultural labor" does not include service performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the federal immigration and nationality act.

(3) As used in this subsection (w), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(4) For the purpose of this section, if an employing unit does not maintain sufficient records to separate agricultural labor from other employment, all services performed during any pay period by an individual for the person employing such individual shall be deemed to be agricultural labor if services performed during 1/2 or more of such pay period constitute agricultural labor; but if the services performed during more than 1/2 of any such pay period by an individual for the person employing such individual do not constitute agricultural labor, then none of the services of such individual for such period shall be deemed to be agricultural labor. As used in this subsection (w), the term "pay period" means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing such individual.

(x) "Reimbursing employer" means any employer who makes payments in lieu of contributions to the employment security fund as provided in subsection (e) of K.S.A. 44-710 and amendments thereto.

(y) "Contributing employer" means any employer other than a reimbursing employer or rated governmental employer.

(z) "Wage combining plan" means a uniform national arrangement approved by the United States secretary of human resources in consultation with the state unemployment compensation agencies and in which

this state shall participate, whereby wages earned in one or more states are transferred to another state, called the "paying state," and combined with wages in the paying state, if any, for the payment of benefits under the laws of the paying state and as provided by an arrangement so approved by the United States secretary of human resources.

(aa) "Domestic service" means any service for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority, as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

(bb) "Rated governmental employer" means any governmental entity which elects to make payments as provided by K.S.A. 44-710d and amendments thereto.

(cc) "Benefit cost payments" means payments made to the employment security fund by a governmental entity electing to become a rated governmental employer.

(dd) "Successor employer" means any employer, as described in subsection (h) of this section, which acquires or in any manner succeeds to (1) substantially all of the employing enterprises, organization, trade or business of another employer or (2) substantially all the assets of another employer.

(ee) "Predecessor employer" means an employer, as described in subsection (h) of this section, who has previously operated a business or portion of a business with employment to which another employer has succeeded.

(ff) "Lessor employing unit" means any independently established business entity which engages in the business of providing leased employees to a client lessee.

(gg) "Client lessee" means any individual, organization, partnership, corporation or other legal entity leasing employees from a lessor employing unit.

(hh) "Qualifying injury" means a personal injury by accident arising out of and in the course of employment within the coverage of the Kansas worker compensation act, K.S.A. 44-501 et seq., and amendments thereto.

History: L. 1937, ch. 255, § 3; L. 1938, ch. 51, § 1; L. 1939, ch. 214, § 1; L. 1941, ch. 264, § 1; L. 1943, ch. 190, § 1; L. 1945, ch. 220, § 1; L. 1947, ch. 291, § 1; L. 1949, ch. 288, § 2; L. 1951, ch. 307, § 1; L. 1955, ch. 251, § 1; L. 1970, ch. 191, § 1; L. 1971, ch. 180, § 1; L. 1972, ch. 161, § 13; L. 1973, ch. 205, § 1; L. 1975, ch. 462, § 54; L. 1976, ch. 226, § 1; L. 1976, ch. 370, § 56; L. 1977, ch. 181, § 1; L. 1979, ch. 159, § 1; L. 1981, ch. 204, § 1; L. 1983, ch. 169, § 1; L. 1984, ch. 183, § 1; L. 1984, ch. 185, § 1; L. 1984, ch. 184, § 4; L. 1986, ch. 190, § 1; L. 1987, ch. 190, § 1; L. 1987, ch. 191, § 1; L. 1988, ch. 170, § 1; L. 1988, ch. 171, § 1; L. 1989, ch. 150, § 1; L. 1990, ch. 186, § 2; L. 1990, ch. 187, § 1; L. 1990, ch. 188, § 1; L. 1992, ch. 74, § 1; L. 1994, ch. 49, § 1; L. 1995, ch. 50,

§ 1; L. 1996, ch. 232, § 2; L. 1997, ch. 174, § 1; L. 1998, ch. 124, § 1; L. 2001, ch. 139, § 1; L. 2002, ch. 84, § 1; L. 2003, ch. 96 § 6; July 1; L. 2004, Ch. 105 § 6, Ch. 179 § 53; L. 2005 ch. 138 § 1; L. 2007, ch. 16 § 1; L. 2007, ch. 196, § 27; L. 2009, ch. 129, § 1 eff. Jan. 1, 2010; L. 2011, ch. 85 § 1 eff. May 19, 2011; L. 2011, ch 81 § 3, July 1, 2011.

44-704. Benefits. (a) *Payment of benefits.* All benefits provided herein shall be payable from the fund. All benefits shall be paid through the secretary of labor, in accordance with such rules and regulations as the secretary may adopt. Benefits based on service in employment defined in subsections (i)(3)(E) and (i)(3)(F) of K.S.A. 44-703, and amendments thereto, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act except as provided in subsection (e) of K.S.A. 44-705 and subsection (e)(2) of K.S.A. 44-711, and any amendments to these statutes.

(b) *Determined weekly benefit amount.* An individual's determined weekly benefit amount shall be an amount equal to 4.25% of the individual's total wages for insured work paid during that calendar quarter of the individual's base period in which such total wages were highest, subject to the following limitations:

(1) If an individual's determined weekly benefit amount is less than the minimum weekly benefit amount, it shall be raised to such minimum weekly benefit amount;

(2) if the individual's determined weekly benefit amount is more than the maximum weekly benefit amount, it shall be reduced to the maximum weekly benefit amount; and

(3) if the individual's determined weekly benefit amount is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

(c) *Maximum weekly benefit amount.* On July 1 of each year, the secretary shall determine the maximum weekly benefit amount by computing 60% of the average weekly wages paid to employees in insured work during the previous calendar year and shall prior to that date announce the maximum weekly benefit amount so determined, by publication in the Kansas register. Such computation shall be made by dividing the gross wages reported as paid for insured work during the previous calendar year by the product of the average of midmonth employment during such calendar year multiplied by 52. The maximum weekly benefit amount so determined and announced for the twelve-month period shall apply only to those claims filed in that period qualifying for maximum payment under the foregoing formula. All claims qualifying for payment at the maximum weekly

benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in the maximum benefit amount for a subsequent twelve-month period. If the computed maximum weekly benefit amount is not a multiple of \$1, then the computed maximum weekly benefit amount shall be reduced to the next lower multiple of \$1.

(d) *Minimum weekly benefit amount.* The minimum weekly benefit amount payable to any individual shall be 25% of the maximum weekly benefit calculated in accordance with subsection (c) and shall be announced by the secretary in conjunction with the published announcement of the maximum weekly benefit, also as provided in subsection (c). The minimum weekly benefit amount so determined and announced for the twelve-month period beginning July 1 of each year shall apply only to those claims which establish a benefit year filed within that twelve-month period and shall apply through the benefit year of such claims notwithstanding a change in such amount in a subsequent twelve-month period. If the minimum weekly benefit amount is not a multiple of \$1 it shall be reduced to the next lower multiple of \$1.

(e) *Weekly benefit payable.* Each eligible individual who is unemployed with respect to any week, except as to final payment, shall be paid with respect to such week a benefit in an amount equal to such individual's determined weekly benefit amount, less that part of the wage, if any, payable to such individual with respect to such week which is in excess of the amount which is equal to 25% of such individual's determined weekly benefit amount and if the resulting amount is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

(1) For the purposes of this section, remuneration received under the following circumstances shall be construed as wages:

(A) Vacation pay that was attributable to a week that the individual claimed benefits while work was temporarily interrupted;

(B) Holiday pay that was payable with no condition of attendance on other regularly scheduled day or days; and

(C) Severance pay, if paid as scheduled, and all other employment benefits within the employer's control, as defined in subsection (e)(3), if continued as though the severance had not occurred, except as set out in subsection (e)(2)(D).

(2) For the purposes of this section, remuneration received under the following circumstances shall not be construed as wages:

(A) Remuneration received for services performed on a public assistance work project;

(B) Vacation pay, except as set out in subsection (e)(1)(A) above;

(C) Holiday pay that was not payable unless the individual complied with a condition of attendance on another regularly scheduled day or days;

(D) Severance pay, in lieu of notice, under the provisions of public law 100-379, the federal worker adjustment and retraining notification act (29 U.S.C.A. 2101 through 2109);

(E) all other severance pay, separation pay, bonuses, wages in lieu of notice or remuneration of a similar nature that is payable after the severance of the employment relationship, except as set out in subsection (e)(1)(C)-; and

(F) moneys received as federal social security payments.

(3) For the purposes of this subsection (e), "employment benefits within the employer's control" means benefits offered by the employer to employees which are employee benefit plans as defined by section 3 of the federal employee retirement income security act of 1974, as amended, (29 U.S.C. 1002) and which the employer has the option to continue to provide to the employee after the last day that the employee worked for that employer.

(f) *Duration of benefits.* Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of 26 times such individual's weekly benefit amount, or 1/3 of such individual's wages for insured work paid during such individual's base period. Such total amount of benefits, if not a multiple of \$1, shall be reduced to the next lower multiple of \$1.

(g) For the purposes of this section, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by whom such wages were paid has satisfied the conditions of subsection (h) of K.S.A. 44-703, and amendments thereto, with respect to becoming an employer.

History: L. 1937, ch. 255, § 4; L. 1939, ch. 214, § 2; L. 1941, ch. 264, § 2; L. 1945, ch. 220, § 2; L. 1947, ch. 291, § 2; L. 1949, ch. 288, § 3; L. 1951, ch. 307, § 2; L. 1955, ch. 251, § 2; L. 1957, ch. 295, § 1; L. 1959, ch. 223, § 1; L. 1970, ch. 191, § 2; L. 1971, ch. 180, § 2; L. 1972, ch. 192, § 1; L. 1973, ch. 205, § 2; L. 1976, ch. 226, § 2; L. 1976, ch. 370, § 57; L. 1977, ch. 181, § 2; L. 1979, ch. 160, § 2; L. 1983, ch. 169, § 2; L. 1984, ch. 183, § 2; L. 1985, ch. 176, § 1; L. 1986, ch. 191, § 1; L. 1991, ch. 145, § 1; L. 1993, ch. 251, § 1; L. 1994, ch.

171, § 1; L. 2003, ch. 96 § 1; July 1; L. 2004, Ch. 179 § 54;

44-704a. Extended benefits. (a) *Definitions.* As used in this section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(A) Begins with the third week after a week for which there is an "on" indicator; and

(B) Ends with either of the following weeks, whichever occurs later: (i) The third week after the first week for which there is an "off" indicator; or (ii) the 13th consecutive week of such period, except that no extended benefit period may begin by reason of an "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) For the purposes of this section:

(A) There is an "on" indicator for this state for a week if the secretary of labor determines, in accordance with the regulations of the U.S. secretary of human resources, that, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this act: (i) Equaled or exceeded 5% and equaled or exceeded 120% of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and the State of Kansas pays a portion of such benefits in accordance with the provisions of K.S.A.44-710(c)(2)(C) and 44-710(e), and amendments thereto; or (ii) equaled or exceeded 5% and equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding three calendar years and until on or before the earlier of the latest date permitted under federal law or the end of the fourth week prior to the last week for which federal sharing is provided as authorized by section 2005(a) of public law 111-5 without regard to section 2005(c) of public law 111-5; or (iii) equal to or exceeding 6%; or (iv) with respect to benefits for weeks of unemployment beginning after March 6, 1993, (a) the average rate of total unemployment (seasonally adjusted), as determined by the U.S. secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5%, and (b) the average rate of total unemployment for this state (seasonally adjusted), as determined by the U.S. secretary of labor, for the three-month period referred to in clause (iv)(a)(1), equals or exceeds 110% of such average for either or both of the corresponding three-month periods ending in the two preceding calendar

years; or (2) equals or exceeds 110% of such average for any or all of the corresponding three-month periods ending in each of the three preceding calendar years and until on or before the earlier of the latest date permitted under federal law or the end of the fourth week prior to the last week for which federal sharing is provided as authorized by section 2005(a) of public law 111-5 without regard to section 2005(c) of public law 111-5.

(B) (i) There is an "off" indicator for this state for a week if the secretary of labor determines, in accordance with the regulations of the U.S. secretary of human resources, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this act: (a)(1) Was less than 5% or less than 120% of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; or (2) was less than 5% or less than 120% of the average of such rates for the corresponding 13-week period ending in any or all of the three preceding calendar years and until on or before the earlier of the latest date permitted under federal law or the end of the fourth week prior to the last week for which federal sharing is provided as authorized by section 2005(a) of public law 111-5 without regard to section 2005(c) of public law 111-5; and (b) was less than 5%.

(ii) There is an "off" indicator for this state for a week only if, for the period consisting of such week and the immediately preceding 12 weeks, none of the conditions specified in subsection (a)(2)(A) of this section result in an "on" indicator.

(3) "Rate of insured unemployment," for purposes of paragraphs (2)(A) and (2)(B) of this subsection, means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the secretary of labor on the basis of reports to the U.S. secretary of human resources; by

(B) the average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(4) "Extended entitlement period" of an individual means the period consisting of the weeks of the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(5) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C.A. chapter 85) payable to an individual under the provisions of the act for weeks of unemployment in the individual's extended entitlement period.

(6) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's extended entitlement period:

(A) Has received, prior to such week, all of the regular benefits that were available to the individual under this act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C.A. chapter 85) in the individual's current benefit year that includes such week, provided that, for the purposes of this paragraph (6)(A), an individual shall be deemed to have received all of the regular benefits that were available to the individual although the individual may subsequently be determined to be entitled to added regular benefits as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of the individual's benefit year; or

(B) the individual's benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit year that would include such week; and

(C)(i) has no right to unemployment benefits or allowances, as the case may be, under the federal railroad unemployment insurance act and such other federal laws as are specified in regulations issued by the U.S. secretary of human resources; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law the individual is considered an exhaustee.

(7) "State law" means the unemployment compensation law of any state, approved by the U.S. secretary of human resources under section 3304 of the federal internal revenue code of 1986.

(b) *Payment of extended benefits.* Extended benefits shall be payable to eligible individuals with respect to weeks of unemployment in their extended entitlement periods. The extended benefits provided by this section and K.S.A. 44-704b and amendments thereto shall be payable from the fund. All extended benefits shall be paid through the employment offices, in accordance with such rules and regulations as the secretary of

labor may adopt.

(c) *Beginning and termination of extended benefit period.* (1) Whenever an extended benefit period is to become effective in this state as a result of an "on" indicator, or an extended benefit period is to be terminated in this state as a result of an "off" indicator, the secretary of labor shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection (a)(3) of this section shall be made by the secretary of labor, in accordance with regulations prescribed by the U.S. secretary of human resources.

(d) *Weekly extended benefit amount.* The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's extended entitlement period shall be an amount equal to the regular weekly benefit amount payable to the individual during the individual's applicable benefit year, except that for any week during a period in which federal payments to states under section 204 of the (i) federal-state extended unemployment compensation act of 1970 are reduced pursuant to an order issued under section 252 of the federal balanced budget and emergency deficit control act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be reduced by a percentage amount which is equivalent to the reduction in the federal payment. If such reduced weekly extended benefit amount is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

(e) *Total extended benefit amount* (1) Except as otherwise provided in subsection (e)(2) or (e)(3) of this section, the total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year shall be the least of the following amounts:

(A) Fifty percent of the total amount of regular benefits which were payable to the individual under this act in the individual's applicable benefit year; or

(B) thirteen times the individual's weekly benefit amount which was payable to the individual under this act for a week of total unemployment in the applicable benefit year.

(2) Effective with respect to weeks beginning in a high unemployment period, the provisions of subsection (e)(1) of this section shall be applied by substituting "eighty percent" for "fifty percent" in subparagraph (A) of that subsection (e)(1), and by substituting "twenty" for "thirteen" in subparagraph (B) of that subsection (e)(1). For purposes of this subsection (e)(2), the

term "high unemployment period" means any period during which an extended benefit period would be in effect if the provisions of subsection (a)(2)(A)(iii) of this section were applied after substituting "8%" for "6.5%" in clause (a) of that subsection (a)(2)(A)(iii).

(3) During any fiscal year in which federal payments to states under section 204 of the federal-state extended unemployment compensation act of 1970 are reduced pursuant to an order issued under section 252 of the federal balanced budget and emergency deficit control act of 1985, the total extended benefit amount payable to an individual with respect to the individual's applicable benefit year shall be reduced by an amount equal to the total of all of the reductions under subsection (d) of this section in the weekly extended benefit amounts paid to the individual.

(f) *Eligibility requirements for extended benefits.* An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the individual's extended entitlement period only if the secretary of labor, or a person or persons designated by the secretary, finds that with respect to such week:

(1) The individual is an "exhaustee" as defined in subsection (a)(6) of this section;

(2) the individual is qualified and eligible for extended benefits pursuant to K.S.A. 44-704b and amendments thereto;

(3) the individual is entitled to benefits pursuant to the provisions of this act which apply to claims for, or the payment of regular benefits which are not inconsistent with the provisions of K.S.A. 44-704b and amendments thereto; and

(4) the individual, during the base period, (A) was paid wages for insured work equal to or greater than 1 1/2 times the amount of total wages paid for the quarter in which such wages were highest during the individual's base period; or (B) has been paid an amount equal to or exceeding 40 times the individual's most recent weekly benefit amount in the individual's base period.

(g) *Limitation on amount of combined regular, extended and trade readjustment act benefits received.* Notwithstanding any other provisions of this section or K.S.A. 44-704b and amendments thereto, if the benefit year of any individual ends within an extended entitlement period, the remaining balance of extended benefits that the individual would, but for this section, be entitled to receive in that extended entitlement period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the

number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

History: L. 1971, ch. 180, § 10; L. 1973, ch. 205, § 3; L. 1976, ch. 370, § 58; L. 1977, ch. 182, § 1; L. 1981, ch. 204, § 2; L. 1982, ch. 214, § 1; L. 1987, ch. 191, § 2; L. 1989, ch. 150, § 2; L. 1993, ch. 251, § 2; L. 2004, Ch. 179 § 55; L. 2011, ch.85, § 2.

44-704b. Same; disqualification conditions; suitable work defined. (a) *Cessation of extended benefits when paid under an interstate claim in a state where an extended benefit period is not in effect:*

(1) Except as provided in subsection (a)(2), an individual shall not be eligible for extended benefits for any week if:

(A) Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(B) no extended benefit period is in effect for such week in the state where the claim for extended benefits was filed.

(2) Subsection (a)(1) shall not apply with respect to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

(b) *Disqualification conditions.* (1) An individual shall be disqualified for payment of extended benefits for any week of unemployment in the individual's extended entitlement period and until the individual has been employed in each of four subsequent weeks, whether or not consecutive, and has had earnings of at least four times the weekly extended benefit amount if the secretary of labor finds that during such period:

(A) The individual failed to accept any offer of suitable work, as defined under subsection (b)(2), or failed to apply for any suitable work as defined in subsection (b)(2) to which the individual was referred by the secretary of labor; or

(B) the individual failed to actively engage in seeking work as prescribed under subsection (b)(4).

(2) For purposes of this subsection (b), the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

(A) The individual's weekly extended benefit amount, plus the amount, if any, of supplemental unemployment benefits, as defined in section 501(c)(17)(D) of the internal revenue code of 1954, payable to such individual for such week; and further,

(B) pays wages not less than the higher of:

(i) The minimum wage provided by section 6(a)(1) of the fair labor standards act of 1938, without regard to any exemption; or

(ii) the applicable state or local minimum wage;

(C) except that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

(i) The position was not offered to such individual in writing by an employing unit or was not listed with the employment service; or

(ii) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subsection (c) of K.S.A. 44-706 and amendments thereto to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection (b)(2); or

(iii) the individual furnishes satisfactory evidence to the secretary of labor that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in subsection (c) of K.S.A. 44-706 and amendments thereto without regard to the definition specified by this subsection (b)(2).

(3) No work shall be determined suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a)(5) of the internal revenue code of 1954. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving such individual's most recent work accepted during approved training, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If the position offered is vacant due directly to a

strike, lockout or other labor dispute;

(B) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(C) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization.

(4) For the purposes of subsection (b)(1)(B), an individual shall be treated as actively engaged in seeking work during any week if:

(A) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(B) the individual furnishes tangible evidence that the individual has engaged in such effort during such week.

(5) The employment service shall refer any individual entitled to extended benefits under this act to any suitable work which meets the criteria prescribed in subsection (b)(2).

History: L. 1981, ch. 204, § 3; L. 1982, ch. 214, § 2; L. 1987, ch. 191, § 3; L. 1993, ch. 251, § 3; L. 2003, ch. 158 § 5; July 1; L. 2004, Ch. 105 § 1, Ch. 179 § 56; July 1.

44-704c. (a) A claimant who exhausts regular benefits and who is enrolled in an approved training program under subsection (s) of K.S.A. 44-703, and amendments thereto, and making successful progress in such program, shall be eligible for up to 26 weeks of additional benefits.

(b) This additional benefit may be provided to a claimant in a shared work program under K.S.A. 44-757, and amendments thereto. However, if the claimant is in a shared work program then such claimant shall not be entitled to receive this additional benefit for two consecutive benefit years after the training benefits expire. In addition, a claimant who is receiving shared work benefits when they become eligible for these additional benefits shall have their payable amount determined in the same manner as their shared work benefit.

History: L. 2003, ch. 96 § 5; L. 2009, ch. 129, § 2; July 1.

44-705. Benefit eligibility conditions. Except as provided by K.S.A. 44-757 and amendments thereto, an unemployed individual shall be eligible to receive benefits with respect to any week only if the secretary, or a person or persons designated by the secretary, finds that:

(a) The claimant has registered for work at and thereafter continued to report at an employment office

in accordance with rules and regulations adopted by the secretary, except that, subject to the provisions of subsection (a) of K.S.A. 44-704 and amendments thereto, the secretary may adopt rules and regulations which waive or alter either or both of the requirements of this subsection (a).

(b) The claimant has made a claim for benefits with respect to such week in accordance with rules and regulations adopted by the secretary.

(c) The claimant is able to perform the duties of such claimant's customary occupation or the duties of other occupations for which the claimant is reasonably fitted by training or experience, and is available for work, as demonstrated by the claimant's pursuit of the full course of action most reasonably calculated to result in the claimant's reemployment except that, notwithstanding any other provisions of this section, an unemployed claimant otherwise eligible for benefits shall not become ineligible for benefits: (1) because of the claimant's enrollment in and satisfactory pursuit of approved training, including training approved under section 236(a)(1) of the trade act of 1974; or (2) solely because such individual is seeking only part-time employment if the individual is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period.

For the purposes of this subsection, an inmate of a custodial or correctional institution shall be deemed to be unavailable for work and not eligible to receive unemployment compensation while incarcerated.

(d)(1) Except as provided further, the claimant has been unemployed for a waiting period of one week or the claimant is unemployed and has satisfied the requirement for a waiting period of one week under the shared work unemployment compensation program as provided in subsection (k)(4) of K.S.A. 44-757 and amendments thereto, which period of one week, in either case, occurs within the benefit year which includes the week for which the claimant is claiming benefits. No week shall be counted as a week of unemployment for the purposes of this subsection (d):

(A) If benefits have been paid for such week;

(B) if the individual fails to meet with the other eligibility requirements of this section; or

(C) if an individual is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such state or of the United States finally determines that the claimant is not entitled to unemployment benefits under such other

law, this subsection (d)(3) shall not apply.

(2) The waiting week requirement of paragraph (1) shall not apply to new claims, filed on or after July 1, 2007, by claimants who become unemployed as a result of an employer terminating business operations within this state, declaring bankruptcy or initiating a work force reduction pursuant to public law 100-379, the federal worker adjustment and retraining notification act (29 U.S.C. § 2101 through 2109), as amended. The secretary shall adopt rules and regulations to administer the provisions of this paragraph.

(e) For benefit years established on and after the effective date of this act, the claimant has been paid total wages for insured work in the claimant's base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's base period, except that the wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date on which such individual filed a valid initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has returned to work and subsequently earned wages for insured work in an amount equal to at least eight times the claimant's current weekly benefit amount.

(f) The claimant participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the secretary, unless the secretary determines that: (1) The individual has completed such services; or (2) there is justifiable cause for the claimant's failure to participate in such services.

(g) The claimant is returning to work after a qualifying injury and has been paid total wages for insured work in the claimant's alternative base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's alternative base period if:

(1) The claimant has filed for benefits within four week of being released to return to work by a licensed and practicing health care provider.

(2) The claimant files for benefits within 24 months of the date the qualifying injury occurred.

(3) The claimant attempted to return to work with the employer where the qualifying injury occurred, but the individual's regular work or comparable and suitable work was not available.

History: L. 1937, ch. 255, § 5; L. 1941, ch. 264, § 3; L. 1943, ch. 190, § 2; L. 1945, ch. 220, § 3; L. 1949, ch. 288, § 4; L. 1955, ch. 251, § 3; L. 1959, ch. 223, § 2; L. 1961, ch. 245, §

1; L. 1970, ch. 191, § 3; L. 1971, ch. 180, § 3; L. 1971, ch. 181, § 1; L. 1973, ch. 205, § 4; L. 1976, ch. 226, § 3; L. 1976, ch. 370, § 59; L. 1977, ch. 181, § 3; L. 1979, ch. 159, § 2; L. 1982, ch. 214, § 3; L. 1988, ch. 172, § 2; L. 1995, ch. 51, § 1; L. 1998, ch. 124, § 2; L. 2002, ch. 84, § 2; L. 2007, ch. 16, § 2; L. 2009, ch. 129, § 3; eff. July 1, 2010; L. 2011, ch. 85, § 3.

44-706. Disqualification for benefits. An individual shall be disqualified for benefits:

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection (a). Failure to return to work after expiration of approved personal or medical leave, or both, shall be considered a voluntary resignation. After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection (a) if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available; as used in this paragraph (1) "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

(4) the spouse of an individual who is a member of the armed forces of the United States who left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for

the individual to continue work at the individual's job. For purposes of this provision the term "armed forces" means active duty in the army, navy, marine corps, air force, coast guard or any branch of the military reserves of the United States;

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph (5), "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist shall include, but shall not be limited to, a consideration of (A) the safety measures used or the lack thereof, and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

(6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the federal trade act of 1974), and wages for such work are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal trade act of 1974;

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of (A) the rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted, (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted, and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's residence to the work left;

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official job duties which is in violation of an ordinance or statute;

(10) the individual left work because of a violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating;

(11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification; or

(12)(A) the individual left work due to circumstances resulting from domestic violence, including:

(i) The individual's reasonable fear of future domestic violence at or en route to or from the individual's place of employment; or

(ii) the individual's need to relocate to another geographic area in order to avoid future domestic violence; or

(iii) the individual's need to address the physical, psychological and legal impacts of domestic violence; or

(iv) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence; or

(v) the individual's reasonable belief that termination of employment is necessary to avoid other situations which may cause domestic violence and to provide for the future safety of the individual or the individual or the individual's family.

(B) An individual may prove the existence of domestic violence by providing one of the following:

(i) A restraining order or other documentation of equitable relief by a court of competent jurisdiction; or

(ii) A police record documenting the abuse; or

(iii) Documentation that the abuser has been convicted of one or more of the offenses enumerated in sections 36 through 77, 174, 210, 211 or 299 through 231 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, where the victim was a family or household member; or

(iv) Medical documentation of the abuse; or

(v) A statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault

advocate or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or

(vi) A sworn statement from the individual attesting the abuse.

(C) No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the department of labor unless consent for disclosure is given by the individual.

(b) If the individual has been discharged for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

(1) For the purposes of this subsection, "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. The term "gross misconduct" as used in this subsection shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection. Failure of the employee to notify the employer of an absence shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

(2) For the purposes of this subsection, the use of or impairment caused by alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be conclusive evidence of misconduct and the possession of alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be prima facie evidence of conduct which is a violation of a duty or obligation reasonably owed to the employer as a condition of employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-

102, and amendments thereto. Cereal malt beverage shall be defined as provided in K.S.A. 41-2701 and amendments, thereto. Controlled substance shall be defined as provided in section 1 and amendments thereto. As used in this paragraph, "required by law" means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity. Chemical test shall include, but is not limited to, tests of urine, blood or saliva. A positive chemical test shall mean a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or abuse listed therein. A positive breath test shall mean a test result showing an alcohol concentration of .04 or greater. Alcohol concentration means the number of grams of alcohol per 210 liters of breath. An individual's refusal to submit to a chemical test or breath alcohol test shall be conclusive evidence of misconduct if the test meets the standards of the drug free workplace act, 41 U.S.C. 701 et seq., the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, the test was otherwise required by law and the test constituted a required condition of employment for the individual's job,; the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or, there was probable cause to believe that the individual used, possessed or was impaired by alcoholic liquor, a cereal malt beverage or a controlled substance while working. A positive breath alcohol test or a positive chemical test shall be conclusive evidence to prove misconduct if the following conditions are met:

(A) Either (i) the test was required by law, and was administered pursuant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment, (iv) the test was required by law and the test constituted a required condition of employment for the individual's job, or (v) there was probable cause to believe that the individual used, had

possession of, or was impaired by the alcoholic liquor, the cereal malt beverage or the controlled substance while working;

(B) the test sample was collected either (i) as prescribed by the drug free workplace act, 41 U.S.C. 701 et seq., (ii) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment, (iv) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job, or (v) at a time contemporaneous with the events establishing probable cause;

(C) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other individual certified pursuant to paragraph (b)(2)(F) or authorized to collect or label test samples by federal or state law, or a federal or state rule or regulation having the force or effect of law, including law enforcement personnel;

(D) the chemical test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(E) the chemical test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample or a breath alcohol test;

(F) the breath alcohol test was administered by an individual trained to perform breath tests, the breath testing instrument used was certified and operated strictly according to description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(G) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the individual.

(3) (A) For the purposes of this subsection (b), misconduct shall include, but not be limited to repeated absence, including incarceration, resulting in absence from work of three days or longer,

excluding Saturdays, Sundays and legal holidays, and lateness, from scheduled work if the facts show:

- (i) The individual was absent without good cause;
- (ii) the absence was in violation of the employer's written absenteeism policy;
- (iii) the employer gave or sent written notice to the individual, at the individual's last known address, that future absence may or will result in discharge;
- (iv) the employee had knowledge of the employer's written absenteeism policy.

(B) For the purposes of this subsection (b), if an employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause. If the employee alleges that the employee's repeated absences were the result of health related issues, such evidence shall include documentation from a licensed and practicing health care provider as defined in subsection (a)(1)

(4) An individual shall not be disqualified under this subsection (b) if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience, (iii) isolated instances of ordinary negligence or inadvertence, (iv) good-faith errors in judgment or discretion, or (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or

(C) the individual's refusal to perform work in excess of the contract of hire.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved

to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a) (1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, and/or legal needs relating to said domestic violence.

(d) For any week with respect to which the secretary of labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of

which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection (d), be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection (d), failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States.

(g) For the period of one year beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor.

(h) For any week with respect to which the individual is receiving compensation for temporary total disability or permanent total disability under the workmen's compensation law of any state or under a similar law of the United States.

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution

as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the individual under this subsection (j) and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection (j).

(k) For any week of unemployment on the basis of service in any capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will

perform such services in the later of such seasons or similar periods.

(m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar periodic payment which is attributable to such week; or (2) if only a portion of contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any person or organization) who is not a base period

employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n); or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n). No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

(o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k) or which an individual performed in an educational institution while in the employ of an educational service agency. For the purposes of this subsection (o), the term "educational service agency" means a governmental agency or entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(p) For any week of unemployment on the basis of service as a school bus or other motor vehicle driver employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection (p) for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from nonschool-related functions or activities.

(q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined

in subsection (v) of K.S.A. 44-703 and amendments thereto, while the individual is in the employ of an employer which is a governmental entity, Indian tribe or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code.

(r) For any week in which an individual is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection (r) provided:

(1) The individual was engaged in full-time employment concurrent with the individual's school attendance; or

(2) the individual is attending approved training as defined in subsection (s) of K.S.A. 44-703 and amendments thereto; or

(3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under subsection (c) of K.S.A. 44-705 and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

(1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.

(2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in section K.S.A. 44-717, and amendments thereto.

(t) If the individual has been discharged for failing a preemployment drug screen required by the employer and if such discharge occurs not later than seven days after the employer is notified of the results of such drug screen. The disqualification shall begin the day

following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

(u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970 and amendments thereto or K.S.A. 65-5117 and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970 and amendments thereto or K.S.A. 65-5117 and amendments thereto and discharged pursuant to K.S.A. 39-970 and amendments thereto or K.S.A. 65-5117 and amendments thereto. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and had earnings from insured work of at least three times the individual's determined weekly benefit amount.

History: L. 1937, ch. 255, § 6; L. 1939, ch. 214, § 3; L. 1941, ch. 264, § 4; L. 1945, ch. 220, § 4; L. 1947, ch. 291, § 3; L. 1959, ch. 223, § 3; L. 1961, ch. 245, § 2; L. 1970, ch. 191, § 4; L. 1976, ch. 370, § 60; L. 1979, ch. 159, § 3; L. 1980, ch. 148, § 1; L. 1982, ch. 214, § 4; L. 1982, ch. 215, § 1; L. 1983, ch. 169, § 3; L. 1983, ch. 170, § 2; L. 1984, ch. 184, § 2; L. 1985, ch. 176, § 2; L. 1986, ch. 191, § 2; L. 1987, ch. 192, § 1; L. 1988, ch. 173, § 1; L. 1989, ch. 151, § 1; L. 1991, ch. 146, § 2; L. 1992, ch. 74, § 2; L. 1993, ch. 251, § 4; L. 1995, ch. 235, § 3; L. 1996, ch. 232, § 6; L. 1999, ch. 167, § 1; L. 2001, ch. 139, § 2; L. 2003, ch. 75 § 6; ch. 96 § 2; ch. 158 § 4; July 1; L. 2004, Ch. 105 § 2, L. Ch. 179 § 57; L. 2005 ch. 33 § 1; L. 2005 ch. 138 § 5; L. 2005 ch. 186 § 14; L. 2009, ch. 32, § 48; L. 2011, ch 30 § 187; L. 2011, ch. 85 § 4.

44-706a. Application of 44-705, 44-706. This act shall only apply to claims filed after April 30, 1961. All claims filed prior to May 1, 1961 shall be governed by the law in effect immediately prior to the effective date of this act.

History: L. 1961, ch. 245, § 3; May 1.

44-707.

History: L. 1937, ch. 255, § 7; L. 1941, ch. 264, § 5; L. 1943, ch. 190, § 3; Repealed, L. 1945, ch. 220, § 13; April 5.

44-707a.

History: L. 1951, ch. 307, § 3; Repealed, L. 1955, ch. 251, § 6; July 1.

44-708.

History: L. 1937, ch. 255, § 8; Repealed, L. 1941, ch. 264, § 18; April 20.

44-709. Claims for benefits; filing; determination of; appointment of referees; appeals, time; procedures;

board of review, membership, compensation and duties; witness fees; judicial review of order of board; findings, judgments, determinations and orders hereunder not admissible or binding in separate or subsequent action or proceeding. (a)

Filing. Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer.

(b) *Determination.* (1) Except as otherwise provided in this subsection (b)(1), a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits payable with respect to the benefit year. If the claim is determined to be valid, the examiner shall send a notice to the last employing unit who shall respond within 10 days by providing the examiner all requested information including all information required for a decision under K.S.A. 44-706 and amendments thereto. The information may be submitted by the employing unit in person at an employment office of the secretary or by mail, by telefacsimile machine or by electronic mail. If the required information is not submitted or postmarked within a response time limit of 10 days after the examiner's notice was sent, the employing unit shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the employing unit's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. In any case in which the payment or denial of benefits will be determined by the provisions of subsection (d) of K.S.A. 44-706 and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in

subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the examiner's or special examiner's decision.

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent employing unit of the claimant that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

(3) Notwithstanding the provisions of any other statute, a decision of an examiner or special examiner shall be final unless the claimant or the most recent employing unit of the claimant files an appeal from the decision as provided in subsection (c). The appeal must be filed within 16 calendar days after the mailing of notice to the last known addresses of the claimant and employing unit or, if notice is not by mail, within 16 calendar days after the delivery of the notice to the parties.

(c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the examiner or special examiner. The parties shall be duly notified of the referee's decision, together with the reasons for the decision. The decision shall be final, notwithstanding the provisions of any other statute, unless a further appeal to the board of review is filed within 16 calendar days after the mailing of the decision to the parties' last known addresses or, if notice is not by mail, within 16 calendar days after the delivery of the decision.

(d) *Referees.* The secretary shall appoint, in accordance with subsection (c) of K.S.A. 44-714 and amendments thereto, one or more referees to hear and decide disputed claims.

(e) *Time, computation and extension.* In computing the period of time for an employing unit response or for appeals under this section from the examiner's or the special examiner's determination or from the referee's decision, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(f) *Board of review.* (1) There is hereby created a board of review, hereinafter referred to as the board, consisting of three members. Except as provided by paragraph (2) of this subsection, each member of the board shall be appointed for a term of four years as provided in this subsection. Two members shall be

appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, no person appointed to the board, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate. One member shall be representative of employees, one member shall be representative of employers, and one member shall be representative of the public in general. The appointment of the employee representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas A.F.L.-C.I.O. The appointment of the employer representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas chamber of commerce and industry. The appointment of the public representative member of the board, who, because of vocation, occupation or affiliation may be deemed not to be representative of either management or labor, shall be made by the members appointed by the governor as employee representative and employer representative. If the two members do not agree and fail to make the appointment of the public member within 30 days after the expiration of the public member's term of office, the governor shall appoint the representative of the public. Not more than two members of the board shall belong to the same political party.

(2) The terms of members who are serving on the board on the effective date of this act shall expire on March 15, of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed.

(3) Each member of the board shall serve until a successor has been appointed and confirmed. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member. Each member shall be appointed as representative of the same special interest group represented by the predecessor of the member.

(4) Each member of the board shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the

secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

(5) The board shall organize annually by the election of a chairperson from among its members. The chairperson shall serve in that capacity for a term of one year and until a successor is elected. The board shall meet on the first Monday of each month or on the call of the chairperson or any two members of the board at the place designated. The secretary of labor shall appoint an executive secretary of the board and the executive secretary shall attend the meetings of the board.

(6) The board, on its own motion, may affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted in the case; may direct the taking of additional evidence; or may permit any of the parties to initiate further appeal before it. The board shall permit such further appeal by any of the parties interested in a decision of a referee which overrules or modifies the decision of an examiner. The board may remove to itself the proceedings on any claim pending before a referee. Any proceedings so removed to the board shall be heard in accordance with the requirements of subsection (c). The board shall promptly notify the interested parties of its findings and decision.

(7) Two members of the board shall constitute a quorum and no action of the board shall be valid unless it has the concurrence of at least two members. A vacancy on the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(g) *Procedure.* The manner in which disputed claims are presented, the reports on claims required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with rules of procedure prescribed by the board for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings and decisions in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. In the performance of its official duties, the board shall have access to all of the records which pertain to the disputed claim and are in the custody of the secretary of labor and shall receive the assistance of the secretary upon request.

(h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary travel

expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

(i) *Court review.* Any action of the board is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. No bond shall be required for commencing an action for such review. In the absence of an action for such review, the action of the board shall become final 16 calendar days after the date of the mailing of the decision. In addition to those persons having standing pursuant to K.S.A. 77-611 and amendments thereto, the examiner shall have standing to obtain judicial review of an action of the board. The review proceeding, and the questions of law certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers compensation act.

(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the board of review or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any separate or subsequent action or proceeding, between a person and a present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the board either personally or by means of a designated representative to present evidence and to state the position of the party. Hearings may be conducted in person, by telephone or other means of electronic communication. The hearing shall be conducted by telephone or other means of electronic communication if none of the parties requests an in-person hearing. If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone or other means of electronic communication. The notice of hearing shall include notice to the parties of their right to request an in-person hearing and instructions on how to make the request.

History: L. 1937, ch. 255, § 9; L. 1941, ch. 264, § 6; L. 1943, ch. 190, § 4; L. 1959, ch. 223, § 4; L. 1965, ch. 320, § 1; L. 1970, ch. 191, § 5; L. 1973, ch. 205, § 5; L. 1976, ch. 226, § 4; L. 1976, ch. 370, § 61; L. 1979, ch. 161, § 2; L.

1980, ch. 149, § 1; L. 1982, ch. 347, § 18; L. 1982, ch. 216, § 1; L. 1982, ch. 312, § 2; L. 1984, ch. 318, § 9; L. 1986, ch. 191, § 3; L. 1986, ch. 318, § 59; L. 1987, ch. 191, § 4; L. 1990, ch. 186, § 3; L. 1993, ch. 251, § 5; L. 1995, ch. 235, § 4; L. 1995, ch. 241, § 5; L. 1997, ch. 19, § 1; L. 1999, ch. 167, § 2; L. 2003, ch. 158 § 6; July 1; L. 2004, Ch. 105 § 3, Ch. 179 § 58; July 1.

44-709a.

History: L. 1982, ch. 215, § 2; Repealed, L. 1999, ch. 167, § 4; July 1.

44-710. Employer contributions, liability for and payment of; pooled fund; election to become reimbursing employer; payments in lieu of contributions; group accounts. (a) *Payment.*

Contributions shall accrue and become payable by each contributing employer for each calendar year in which the contributing employer is subject to the employment security law with respect to wages paid for employment. Such contributions shall become due and be paid by each contributing employer to the secretary for the employment security fund in accordance with such rules and regulations as the secretary may adopt and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of \$.01 shall be disregarded unless it amounts to \$.005 or more, in which case it shall be increased to \$.01. Should contributions for any calendar quarter be less than \$5, no payment shall be required.

(b) *Rates and base of contributions.* (1) Except as provided in paragraph (2) of this subsection, each contributing employer shall pay contributions on wages paid by the contributing employer during each calendar year with respect to employment as provided in K.S.A. 44-710a and amendments thereto. Except that notwithstanding the federal law requiring the secretary of labor to annually recalculate the contribution rate, for calendar years 2010, 2011, 2012, 2013 and 2014, the secretary shall charge each contributing employer in rate groups 1 through 32 the contribution rate in the 2010 original tax rate computation table, with contributing employers in rate groups 33 through 51 being capped at a 5.4% contribution rate.

(2)(A) If the congress of the United States either amends or repeals the Wagner-Peyser act, the federal unemployment tax act, the federal social security act, or subtitle C of chapter 23 of the federal internal revenue code of 1986, or any act or acts supplemental to or in lieu thereof, or any part or parts of any such

law, or if any such law, or any part or parts thereof, are held invalid with the effect that appropriations of funds by congress and grants thereof to the state of Kansas for the payment of costs of administration of the employment security law are no longer available for such purposes, or (B) if employers in Kansas subject to the payment of tax under the federal unemployment tax act are granted full credit against such tax for contributions or taxes paid to the secretary of labor, then, and in either such case, beginning with the year in which the unavailability of federal appropriations and grants for such purpose occurs or in which such change in liability for payment of such federal tax occurs and for each year thereafter, the rate of contributions of each contributing employer shall be equal to the total of .5% and the rate of contributions as determined for such contributing employer under K.S.A. 44-710a and amendments thereto. The amount of contributions which each contributing employer becomes liable to pay under this paragraph (2) over the amount of contributions which such contributing employer would be otherwise liable to pay shall be credited to the employment security administration fund to be disbursed and paid out under the same conditions and for the same purposes as other moneys are authorized to be paid from the employment security administration fund, except that, if the secretary determines that as of the first day of January of any year there is an excess in the employment security administration fund over the amount required to be disbursed during such year, an amount equal to such excess as determined by the secretary shall be transferred to the employment security fund.

(c) *Charging of benefit payments.* (1) The secretary shall maintain a separate account for each contributing employer, and shall credit the contributing employer's account with all the contributions paid on the contributing employer's own behalf. Nothing in the employment security law shall be construed to grant any employer or individuals in such employer's service prior claims or rights to the amounts paid by such employer into the employment security fund either on such employer's own behalf or on behalf of such individuals. Benefits paid shall be charged against the accounts of each base period employer in the proportion that the base period wages paid to an eligible individual by each such employer bears to the total wages in the base period. Benefits shall be charged to contributing employers' accounts and rated governmental employers' accounts upon the basis of benefits paid during each twelve-month period ending on the computation date.

(2) (A) Benefits paid in benefit years established by valid new claims shall not be charged to the account of a contributing employer or rated governmental employer who is a base period employer if the examiner finds that claimant was separated from the claimant's most recent employment with such employer under any of the following conditions: (i) Discharged for misconduct or gross misconduct connected with the individual's work; or (ii) leaving work voluntarily without good cause attributable to the claimant's work or the employer.

(B) Where base period wage credits of a contributing employer or rated governmental employer represent part-time employment and the claimant continues in that part-time employment with that employer during the period for which benefits are paid, then that employer's account shall not be charged with any part of the benefits paid if the employer provides the secretary with information as required by rules and regulations. For the purposes of this subsection (c)(2) (B), "part-time employment" means any employment when an individual works concurrently for two or more employers and also works less than full-time for at least one of those employers because the individual's services are not required for the customary, scheduled full-time hours prevailing at the work place or the individual does not customarily work the regularly scheduled full-time hours due to personal choice or circumstances.

(C) No contributing employer or rated governmental employer's account shall be charged with any extended benefits paid in accordance with the employment security law, except for weeks of unemployment beginning after December 31, 1978, all contributing governmental employers and governmental rated employers shall be charged an amount equal to all extended benefits paid.

(D) No contributing employer, rated governmental employer or reimbursing employer's account shall be charged for any additional benefits paid during the period July 1, 2003 through June 30, 2004.

(E) No contributing employer or rated governmental employer's account will be charged for benefits paid a claimant while pursuing an approved training course as defined in subsection (s) of K.S.A. 44-703 and amendments thereto.

(F) No contributing employer or rated governmental employer's account shall be charged with respect to the benefits paid to any individual whose base period wages include wages for services not covered by the employment security law prior to January 1, 1978,

to the extent that the employment security fund is reimbursed for such benefits pursuant to section 121 of public law 94-566 (90 Stat. 2673).

(G) With respect to weeks of unemployment beginning after December 31, 1977, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection (c)(2) (G), the term "previously uncovered services" means services which were not covered employment, at any time during the one-year period ending December 31, 1975, except to the extent that assistance under title II of the federal emergency jobs and unemployment assistance act of 1974 was paid on the basis of such services, and which:

(i) Are agricultural labor as defined in subsection (w) of K.S.A. 44-703 and amendments thereto or domestic service as defined in subsection (aa) of K.S.A. 44-703 and amendments thereto, or

(ii) are services performed by an employee of this state or a political subdivision thereof, as provided in subsection (i)(3)(E) of K.S.A. 44-703 and amendments thereto, or

(iii) are services performed by an employee of a nonprofit educational institution which is not an institution of higher education.

(H) No contributing employer or rated governmental employer's account shall be charged with respect to their pro rata share of benefit charges if such charges are of \$100 or less.

(3) The examiner shall notify any base period employer whose account will be charged with benefits paid following the filing of a valid new claim and a determination by the examiner based on all information relating to the claim contained in the records of the division of employment. Such notice shall become final and benefits charged to the base period employer's account in accordance with the claim unless within 10 calendar days from the date the notice was sent, the base period employer requests in writing that the examiner reconsider the determination and furnishes any required information in accordance with the secretary's rules and regulations. In a similar manner, a notice of an additional claim followed by the first payment of benefits with respect to the benefit year, filed by an individual during a benefit year after a period in such year during which such individual was employed, shall be given to any base period employer of the individual who has requested such a notice within 10 calendar days from the date the notice of the valid new claim was sent to such base period employer. For purposes of this subsection (c)

(3), if the required information is not submitted or postmarked within a response time limit of 10 days after the base period employer notice was sent, the base period employer shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the base period employer's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. The examiner shall notify the employer of the reconsidered determination which shall be subject to appeal, or further reconsideration, in accordance with the provisions of K.S.A. 44-709 and amendments thereto.

(4) Time, computation and extension. In computing the period of time for a base period employer response or appeals under this section from the examiner's or the special examiner's determination or from the referee's decision, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

(d) *Pooled fund.* All contributions and payments in lieu of contributions and benefit cost payments to the employment security fund shall be pooled and available to pay benefits to any individual entitled thereto under the employment security law, regardless of the source of such contributions or payments in lieu of contributions or benefit cost payments.

(e) *Election to become reimbursing employer; payment in lieu of contributions.* (1) Any governmental entity, Indian tribes or tribal units, (subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribes), for which services are performed as described in subsection (i)(3)(E) of K.S.A. 44-703 and amendments thereto or any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income tax under section 501(a) of such code, that becomes subject to the employment security law may elect to become a reimbursing employer under this subsection (e)(1) and agree to pay the secretary for the employment security fund an amount equal to the amount of regular benefits and 1/2 of the extended benefits paid that are attributable to service in the employ of such reimbursing employer,

except that each reimbursing governmental employer, Indian tribes or tribal units shall pay an amount equal to the amount of regular benefits and extended benefits paid for weeks of unemployment beginning after December 31, 1978, for governmental employers and December 21, 2000, for Indian tribes or tribal units to individuals for weeks of unemployment which begin during the effective period of such election.

(A) Any employer identified in this subsection (e)(1) may elect to become a reimbursing employer for a period encompassing not less than four complete calendar years if such employer files with the secretary a written notice of such election within the thirty-day period immediately following January 1 of any calendar year or within the thirty-day period immediately following the date on which a determination of subjectivity to the employment security law is issued, whichever occurs later.

(B) Any employer which makes an election to become a reimbursing employer in accordance with subparagraph (A) of this subsection (e)(1) will continue to be liable for payments in lieu of contributions until such employer files with the secretary a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

(C) Any employer identified in this subsection (e)(1) which has remained a contributing employer and has been paying contributions under the employment security law for a period subsequent to January 1, 1972, may change to a reimbursing employer by filing with the secretary not later than 30 days prior to the beginning of any calendar year a written notice of election to become a reimbursing employer. Such election shall not be terminable by the employer for four complete calendar years.

(D) The secretary may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after January 1 of the year such election is received.

(E) The secretary, in accordance with such rules and regulations as the secretary may adopt, shall notify each employer identified in subsection (e)(1) of any determination which the secretary may make of its status as an employer and of the effective date of any election which it makes to become a reimbursing employer and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions

of K.S.A. 44-710b and amendments thereto.

(2) *Reimbursement reports and payments.* Payments in lieu of contributions shall be made in accordance with the provisions of paragraph (A) of this subsection (e)(2) by all reimbursing employers except the state of Kansas. Each reimbursing employer shall report total wages paid during each calendar quarter by filing quarterly wage reports with the secretary which shall be filed by the last day of the month following the close of each calendar quarter. Wage reports are deemed filed as of the date they are placed in the United States mail.

(A) At the end of each calendar quarter, or at the end of any other period as determined by the secretary, the secretary shall bill each reimbursing employer, except the state of Kansas, (i) an amount to be paid which is equal to the full amount of regular benefits plus 1/2 of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing employer; and (ii) for weeks of unemployment beginning after December 31, 1978, each reimbursing governmental employer and December 21, 2000, for Indian tribes or tribal units shall be certified an amount to be paid which is equal to the full amount of regular benefits and extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing governmental employer.

(B) Payment of any bill rendered under paragraph (A) of this subsection (e)(2) shall be made not later than 30 days after such bill was mailed to the last known address of the reimbursing employer, or otherwise was delivered to such reimbursing employer, unless there has been an application for review and re-determination in accordance with paragraph (D) of this subsection (e)(2).

(C) Payments made by any reimbursing employer under the provisions of this subsection (e)(2) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of such employer.

(D) The amount due specified in any bill from the secretary shall be conclusive on the reimbursing employer, unless, not later than 15 days after the bill was mailed to the last known address of such employer, or was otherwise delivered to such employer, the reimbursing employer files an application for re-determination in accordance with K.S.A. 44-710b and amendments thereto.

(E) Past due payments of amounts certified by the secretary under this section shall be subject to the

same interest, penalties and actions required by K.S.A. 44-717 and amendments thereto. (1) If any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 or governmental reimbursing employer is delinquent in making payments of amounts certified by the secretary under this section, the secretary may terminate such employer's election to make payments in lieu of contributions as of the beginning of the next calendar year and such termination shall be effective for such next calendar year and the calendar year thereafter so that the termination is effective for two complete calendar years.

(2) Failure of the Indian tribe or tribal unit to make required payments including assessment of interest and penalty within 90 days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions as described pursuant to paragraph (e)(1) for the following tax year unless payment in full is received before contribution rates for the next tax year calculated. (3) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in paragraph (2), shall have such option reinstated, if after a period of one year, all contributions have been made on time and no contributions, payments in lieu, of contributions for benefits paid, penalties or interest remain outstanding.

(F) Failure of the Indian tribe or any tribal unit thereof to required payments, including assessments of interest and penalties, after all collection activities deemed necessary by the secretary have been exhausted, will cause services performed by such tribe to not be treated as employment for purposes of subsection (i)(3)(E) of K.S.A. 44-703 and amendments thereto. If an Indian tribe fails to make payments required under this section, including assessments of interest and penalties, within 90 days of a final notice of delinquency, the secretary shall immediately notify the United States internal revenue service and the United States department of labor. The secretary may determine that any Indian tribe that loses coverage pursuant to this paragraph may have services performed on behalf of such tribe deemed "employment" if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(G) In the discretion of the secretary, any employer who elects to become liable for payments in lieu of contributions and any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 or

governmental reimbursing employer or Indian tribe or tribal unit who is delinquent in filing reports or in making payments of amounts certified by the secretary under this section shall be required within 60 days after the effective date of such election, in the case of an eligible employer so electing, or after the date of notification to the delinquent employer under this subsection (e)(2)(G), in the case of a delinquent employer, to execute and file with the secretary a surety bond, except that the employer may elect, in lieu of a surety bond, to deposit with the secretary money or securities as approved by the secretary or to purchase and deliver to an escrow agent a certificate of deposit to guarantee payment. The amount of the bond deposit or escrow agreement required by this subsection (e)(2)(G), shall not exceed 5.4% of the organization's taxable wages paid for employment by the eligible employer during the four calendar quarters immediately preceding the effective date of the election or the date of notification, in the case of a delinquent employer. If the employer did not pay wages in each of such four calendar quarter, the amount of the bond or deposit shall be as determined by the secretary. Upon the failure of an employer to comply with this subsection (e)(2)(G) within the time limits imposed or to maintain the required bond or deposit, the secretary may terminate the election of such eligible employer or delinquent employer, as the case may be, to make payments in lieu of contributions, and such termination shall be effective for the current and next calendar year.

(H) The state of Kansas shall make reimbursement payments quarterly at a fiscal year rate which shall be based upon: (i) The available balance in the state's reimbursing account as of December 31 of each calendar year; (ii) the historical unemployment experience of all covered state agencies during prior years; (iii) the estimate of total covered wages to be paid during the ensuing calendar year; (iv) the applicable fiscal year rate of the claims processing and auditing fee under K.S.A. 75-3798 and amendments thereto; and (v) actuarial and other information furnished to the secretary by the secretary of administration. In accordance with K.S.A. 75-3798 and amendments thereto, the claims processing and auditing fees charged to state agencies shall be deducted from the amounts collected for the reimbursement payments under this paragraph (H) prior to making the quarterly reimbursement payments for the state of Kansas. The fiscal year rate shall be expressed as a percentage of covered

total wages and shall be the same for all covered state agencies. The fiscal year rate for each fiscal year will be certified in writing by the secretary to the secretary of administration on July 15 of each year and such certified rate shall become effective on the July 1 immediately following the date of certification. A detailed listing of benefit charges applicable to the state's reimbursing account shall be furnished quarterly by the secretary to the secretary of administration and the total amount of charges deducted from previous reimbursing payments made by the state. On January 1 of each year, if it is determined that benefit charges exceed the amount of prior reimbursing payments, an upward adjustment shall be made therefor in the fiscal year rate which will be certified on the ensuing July 15. If total payments exceed benefit charges, all or part of the excess may be refunded, at the discretion of the secretary, from the fund or retained in the fund as part of the payments which may be required for the next fiscal year.

(3) *Allocation of benefit costs.* The reimbursing account of each reimbursing employer shall be charged the full amount of regular benefits and 1/2 of the amount of extended benefits paid except that each reimbursing governmental employer's account shall be charged the full amount of regular benefits and extended benefits paid for weeks of unemployment beginning after December 31, 1978, to individuals whose entire base period wage credits are from such employer. When benefits received by an individual are based upon base period wage credits from more than one employer then the reimbursing employer's or reimbursing governmental employer's account shall be charged in the same ratio as base period wage credits from such employer bear to the individual's total base period wage credits. Notwithstanding any other provision of the employment security law, no reimbursing employer's or reimbursing governmental employer's account shall be charged for payments of extended benefits which are wholly reimbursed to the state by the federal government.

(A) *Proportionate allocation (when fewer than all reimbursing base period employers are liable).* If benefits paid to an individual are based on wages paid by one or more reimbursing employers and on wages paid by one or more contributing employers or rated governmental employers, the amount of benefits payable by each reimbursing employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period

wages paid to the individual by such employer bears to the total base period wages paid to the individual by all of such individual's base period employers.

(B) *Proportionate allocation (when all base period employers are reimbursing employers).* If benefits paid to an individual are based on wages paid by two or more reimbursing employers, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of such individual's base period employers.

(4) *Group accounts.* Two or more reimbursing employers may file a joint application to the secretary for the establishment of a group account, for the purpose of sharing the cost of benefits paid that are attributable to service in the employment of such reimbursing employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection (e)(4). Upon approval of the application, the secretary shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the secretary receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than four years and thereafter such account shall remain in effect until terminated at the discretion of the secretary or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The secretary shall adopt such rules and regulations as the secretary deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subsection (e)(4), for addition of new members to, and withdrawal of active members from such accounts, and for the determination of the amounts that are payable under this subsection (e)(4) by members of the group and the time and manner of such payments.

History: L. 1937, ch. 255, § 10; L. 1941, ch. 264, § 7; L. 1943, ch. 190, § 5; L. 1945, ch. 220, § 5; L. 1947, ch. 292,

§ 1; L. 1949, ch. 288, § 5; L. 1953, ch. 247, § 1; L. 1963, ch. 276, § 1; L. 1970, ch. 191, § 6; L. 1971, ch. 180, § 4; L. 1972, ch. 192, § 2; L. 1973, ch. 205, § 6; L. 1974, ch. 205, § 1; L. 1975, ch. 261, § 1; L. 1976, ch. 370, § 62; L. 1977, ch. 181, § 4; L. 1979, ch. 159, § 4; L. 1981, ch. 205, § 1; L. 1982, ch. 216, § 2; L. 1984, ch. 184, § 3; L. 1987, ch. 191, § 5; L. 1988, ch. 343, § 1; L. 1989, ch. 150, § 3; L. 1990, ch. 186, § 4; L. 1996, ch. 232, § 3; L. 1997, ch. 19, § 2; L. 1998, ch. 167, § 1; L. 2001, ch. 139, § 3; L. 2002, ch. 84, § 3; L. 2003, ch. 96 § 4; July 1; L. 2004, Ch. 105 § 4, Ch. 179 § 59; L. 2008, ch. 105, § 2, eff. July 1, 2008; L. 2010, ch 14, § 1; L. 2011, ch. 85 § 5.

44-710a. Same; classification of employers; establishment and assignment of annual rates; successor classifications; voluntary contributions; surcharge on negative accounts; annual certification of Kansas account balance. (a) *Classification of employers by the secretary.* The term "employer" as used in this section refers to contributing employers. The secretary shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts with a view of fixing such contribution rates as will reflect such experience. If, as of the date such classification of employers is made, the secretary finds that any employing unit has failed to file any report required in connection therewith, or has filed a report which the secretary finds incorrect or insufficient, the secretary shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to the secretary at the time, and notify the employing unit thereof by mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report as the case may be, within 15 days after the mailing of such notice, the secretary shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increase but not to reduction on the basis of subsequently ascertained information. The secretary shall determine the contribution rate of each employer in accordance with the requirements of this section.

(1) *New employers.* (A) No employer will be eligible for a rate computation until there have been 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account.

(B) (i) For the rate year 2007 and each year thereafter, each employer who is not eligible for a

rate contribution shall pay contributions equal to 4% of wages paid during each calendar year with regard to employment except such employers engaged in the construction industry shall pay a rate equal to 6%.

(ii) For rate years prior to 2007, employers who are not eligible for a rate computation shall pay contributions at an assigned rate equal to the sum of 1% plus the greater of the average rate assigned in the preceding calendar year to all employers in such industry sector or the average rate assigned to all covered employers during the preceding calendar year, except that in no instance shall any such assigned rate be less than 2%. Employers engaged in more than one type of industrial activity shall be classified by principal activity. All rates assigned will remain in effect for a complete calendar year. If the sale or acquisition of a new establishment would require classification of the employer would be promptly notified, and the contribution rate applicable to the new industry sector would become effective the following January 1.

(iii) For purposes of this subsection (a), employers shall be classified by industrial activity in accordance with standard procedures as set forth in rules and regulations adopted by the secretary.

(C) "Computation date" means June 30 of each calendar year with respect to rates of contribution applicable to the calendar year beginning with the following January 1. In arriving at contribution rates for each calendar year, contributions paid on or before July 31 following the computation date for employment occurring on or prior to the computation date shall be considered for each contributing employer who has been subject to this act for a sufficient period of time to have such employer's rate computed under this subsection (a).

(2) *Eligible employers.* (A) A reserve ratio shall be computed for each eligible employer by the following method: Total benefits charged to the employer's account for all past years shall be deducted from all contributions paid by such employer for all such years. The balance, positive or negative, shall be divided by the employer's average annual payroll, and the result shall constitute the employer reserve ratio.

(B) Negative account balance employers as defined in subsection (d) shall pay contributions at the rate of 5.4% for each calendar year.

(C) Eligible employers, other than negative account balance employers, who do not meet the average annual payroll requirements as stated in subsection (a)(2) of K.S.A. 44-703 and amendments thereto, will be issued the maximum rate indicated in subsection (a)(3)(C) of this section until such employer establishes a new period of

24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account by resuming the payment of wages. Contribution rates effective for each calendar year thereafter shall be determined as prescribed below.

(D) As of each computation date, the total of the taxable wages paid during the twelve-month period prior to the computation date by all employers eligible for rate computation, except negative account balance employers, shall be divided into 51 approximately equal parts designated in column A of schedule I as "rate groups," except, with regard to a year in which the taxable wage base changes. The taxable wages used in the calculation for such a year and the following year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during the entire twelve-month period prior to the computation date. The lowest numbered of such rate groups shall consist of the employers with the most favorable reserve ratios, as defined in this section, whose combined taxable wages paid are less than 1.96% of all taxable wages paid by all eligible employers. Each succeeding higher numbered rate group shall consist of employers with reserve ratios that are less favorable than those of employers in the preceding lower numbered rate groups and whose taxable wages when combined with the taxable wages of employers in all lower numbered rate groups equal the appropriate percentage of total taxable wages designated in column B of schedule I. Each eligible employer, other than a negative account balance employer, shall be assigned an experience factor designated under column C of schedule I in accordance with the rate group to which the employer is assigned on the basis of the employer's reserve ratio and taxable payroll. If an employer's taxable payroll falls into more than one rate group the employer shall be assigned the experience factor of the lower numbered rate group. If one or more employers have reserve ratios identical to that of the last employer included in the next lower numbered rate group, all such employers shall be assigned the experience factor designated to such last employer, notwithstanding the position of their taxable payroll in column B of schedule I.

SCHEDULE I – Eligible Employers

Column A	Column B	Column C
Rate Group	Cumulative Taxable Payroll	Experience Factor (Ratio to total wages)
1	Less than 1.96% .....	.025%

2	1.96% but less than 3.92 .....	.04
3	3.92 but less than 5.88 .....	.08
4	5.88 but less than 7.84 .....	.12
5	7.84 but less than 9.80 .....	.16
6	9.80 but less than 11.76 .....	.20
7	11.76 but less than 13.72 .....	.24
8	13.72 but less than 15.68 .....	.28
9	15.68 but less than 17.64 .....	.32
10	17.64 but less than 19.60 .....	.36
11	19.60 but less than 21.56 .....	.40
12	21.56 but less than 23.52 .....	.44
13	23.52 but less than 25.48 .....	.48
14	25.48 but less than 27.44 .....	.52
15	27.44 but less than 29.40 .....	.56
16	29.40 but less than 31.36 .....	.60
17	31.36 but less than 33.32 .....	.64
18	33.32 but less than 35.28 .....	.68
19	35.28 but less than 37.24 .....	.72
20	37.24 but less than 39.20 .....	.76
21	39.20 but less than 41.16 .....	.80
22	41.16 but less than 43.12 .....	.84
23	43.12 but less than 45.08 .....	.88
24	45.08 but less than 47.04 .....	.92
25	47.04 but less than 49.00 .....	.96
26	49.00 but less than 50.96	1.00
27	50.96 but less than 52.92	1.04
28	52.92 but less than 54.88	1.08
29	54.88 but less than 56.84	1.12
30	56.84 but less than 58.80	1.16
31	58.80 but less than 60.76	1.20
32	60.76 but less than 62.72	1.24
33	62.72 but less than 64.68	1.28
34	64.68 but less than 66.64	1.32
35	66.64 but less than 68.60	1.36
36	68.60 but less than 70.56	1.40
37	70.56 but less than 72.52	1.44
38	72.52 but less than 74.48	1.48
39	74.48 but less than 76.44	1.52
40	76.44 but less than 78.40	1.56
41	78.40 but less than 80.36	1.60
42	80.36 but less than 82.32	1.64
43	82.32 but less than 84.28	1.68
44	84.28 but less than 86.24	1.72
45	86.24 but less than 88.20	1.76
46	88.20 but less than 90.16	1.80
47	90.16 but less than 92.12	1.84
48	92.12 but less than 94.08	1.88
49	94.08 but less than 96.04	1.92
50	96.04 but less than 98.00	1.96
51	98.00 and over	2.00

(E) Negative account balance employers shall, in addition to paying the rate provided for in subsection (a)(2)(B) of this section, pay a surcharge based on the size of the employer's negative reserve ratio, the calculation which is provided for in subsection (a)(2) of this section. The amount of the surcharge shall be determined from column B2 of schedule II of this section for calendar

years 2012, 2013 and 2014 and from column B1 of schedule II of this section for each calendar year after 2014. Each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703 and amendments thereto, shall be assigned a surcharge equal to the maximum negative ratio surcharge from column B2 of schedule II of this section for calendar years 2012, 2013 and 2014. From calendar year 2015 forward each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be assigned a surcharge equal to the maximum negative ratio surcharge from column B1 of schedule II of this section. Funds from the surcharge paid according to this subsection (a)(2)(E), and amendments thereto, shall be used to pay principal and interest due on funds received from the federal unemployment account under title XII of the social security act (42 U.S.C. § 1321 to 1324), in the following manner:

(i) For each calendar year 2012, 2013 and 2014, an additional 0.10% of the taxable wages paid by all negative account balance employers with a negative reserve ratio between 0.0% and 19.9% shall be designated an interest assessment surcharge and paid into the employment security interest assessment fund for the purpose of paying interest due and owing on funds received from the federal unemployment account under title XII of the social security act. The total surcharges assessed, including the additional 0.10% surcharge mentioned above, on such employers are listed in schedule II column B2. For the calendar year 2015, and each calendar year thereafter, the surcharge rate for negative balance employers with a negative reserve ratio between 0.0% and 19.9% shall be as listed in schedule II column B1.

(ii) For the calendar year 2012, and each calendar year thereafter, an additional surcharge on negative balance employers with negative reserve ratio of 20.0% and higher shall be designated an interest assessment surcharge and deposited in the employment security interest assessment fund. The additional surcharge shall be used for the purposes of paying interest due and owing on funds received from the federal unemployment account under title XII of the social security act. The total surcharge including the additional surcharge on such employers is listed in schedule II column B3 of this section.

(iii) For any succeeding year in which interest is due and owing on funds received from the federal

unemployment account under title XII of the social security act, the secretary of labor may adjust the surcharge amounts necessary to pay such interest;

(iv) the portion of such surcharge used for the payment of such interest shall not be included in the calculation of such employers reserve ratio pursuant to subsection (a)(2). The portion of such surcharge used for the payment of principal shall be included in the calculation of such employers reserve ratio pursuant to subsection (a)(2); and

(v) If the amounts collected under this subsection are in excess of the amounts needed to pay interest due, the amounts in excess shall remain in the employment security interest assessment fund to be used to pay interest in future years. Whenever the secretary certifies all interest payments have been paid pursuant to this section, any excess funds remaining in the employment security interest assessment fund shall be transferred to the employment security trust fund for the purpose of paying any remaining principal amount due for advances described in this section. In the event that the amount transferred from the employment security interest assessment fund exceeds such remaining amount of principal due, the balance shall be used for the purposes of the employment security trust fund.

SCHEDULE II Surcharge on Negative Accounts

<u>Column A</u>	<u>Column B1</u>	<u>Column B2</u>	<u>Column B3</u>
Negative Reserve Ratio:	Surcharge as a percent of taxable wages:	Surcharge as a percent of taxable wages	Surcharge as a percent of taxable wages
Less than 2.0%	0.20%	0.30%	
2.0% but less than 4.0	0.40	0.50	
4.0 but less than 6.0	0.60	0.70	
6.0 but less than 8.0	0.80	0.90	
8.0 but less than 10.0	1.00	1.10	
10.0 but less than 12.0	1.20	1.30	
12.0 but less than 14.0	1.40	1.50	
14.0 but less than 16.0	1.60	1.70	
16.0 but less than 18.0	1.80	1.90	
18.0 but less than 20.0	2.00	2.10	
20.0 but less than 22.0	2.00		2.20%
22.0 but less than 24.0	2.00		2.40
24.0 but less than 26.0	2.00		2.60
26.0 but less than 28.0	2.00		2.80
28.0 but less than 30.0	2.00		3.00
30.0 but less than 32.0	2.00		3.20
32.0 but less than 34.0	2.00		3.40
34.0 but less than 36.0	2.00		3.60
36.0 but less than 38.0	2.00		3.80
38.0 and over	2.00		4.00

(3) Planned yield. (A) The average required yield shall be determined from schedule III of this section, and the planned yield on total wages in column B of schedule III shall be determined by the reserve fund ratio in column A of schedule III. The reserve fund ratio shall be determined by dividing total assets in the employment security fund provided for in subsection (a) of K.S.A. 44-712 and amendments thereto, excluding all moneys credited to the account of this state pursuant to section 903 of the federal social security act, as amended, which have been appropriated by the state legislature, whether or not withdrawn from the trust fund, and excluding contributions not yet paid on July 31 by total payrolls for contributing employers for the preceding fiscal year which ended June 30.

**SCHEDULE III – Fund Control
Ratio to Total Wages**

Column A Reserve Fund Ratio	Column B Planned Yield
4.500 and over.....	0.00
4.475 but less than 4.500.....	0.01
4.450 but less than 4.475.....	0.02
4.425 but less than 4.450.....	0.03
4.400 but less than 4.425.....	0.04
4.375 but less than 4.400.....	0.05
4.350 but less than 4.375.....	0.06
4.325 but less than 4.350.....	0.07
4.300 but less than 4.325.....	0.08
4.275 but less than 4.300.....	0.09
4.250 but less than 4.275.....	0.10
4.225 but less than 4.250.....	0.11
4.200 but less than 4.225.....	0.12
4.175 but less than 4.200.....	0.13
4.150 but less than 4.175.....	0.14
4.125 but less than 4.150.....	0.15
4.100 but less than 4.125.....	0.16
4.075 but less than 4.100.....	0.17
4.050 but less than 4.075.....	0.18
4.025 but less than 4.050.....	0.19
4.000 but less than 4.025.....	0.20
3.950 but less than 4.000.....	0.21
3.900 but less than 3.950.....	0.22
3.850 but less than 3.900.....	0.23
3.800 but less than 3.850.....	0.24
3.750 but less than 3.800.....	0.25
3.700 but less than 3.750.....	0.26
3.650 but less than 3.700.....	0.27
3.600 but less than 3.650.....	0.28
3.550 but less than 3.600.....	0.29
3.500 but less than 3.550.....	0.30
3.450 but less than 3.500.....	0.31
3.400 but less than 3.450.....	0.32
3.350 but less than 3.400.....	0.33
3.300 but less than 3.350.....	0.34

3.250 but less than 3.300.....	0.35
3.200 but less than 3.250.....	0.36
3.150 but less than 3.200.....	0.37
3.100 but less than 3.150.....	0.38
3.050 but less than 3.100.....	0.39
3.000 but less than 3.050.....	0.40
2.950 but less than 3.000.....	0.41
2.900 but less than 2.950.....	0.42
2.850 but less than 2.900.....	0.43
2.800 but less than 2.850.....	0.44
2.750 but less than 2.800.....	0.45
2.700 but less than 2.750.....	0.46
2.650 but less than 2.700.....	0.47
2.600 but less than 2.650.....	0.48
2.550 but less than 2.600.....	0.49
2.500 but less than 2.550.....	0.50
2.450 but less than 2.500.....	0.51
2.400 but less than 2.450.....	0.52
2.350 but less than 2.400.....	0.53
2.300 but less than 2.350.....	0.54
2.250 but less than 2.300.....	0.55
2.200 but less than 2.250.....	0.56
2.150 but less than 2.200.....	0.57
2.100 but less than 2.150.....	0.58
2.050 but less than 2.100.....	0.59
2.000 but less than 2.050.....	0.60
1.975 but less than 2.000.....	0.61
1.950 but less than 1.975.....	0.62
1.925 but less than 1.950.....	0.63
1.900 but less than 1.925.....	0.64
1.875 but less than 1.900.....	0.65
1.850 but less than 1.875.....	0.66
1.825 but less than 1.850.....	0.67
1.800 but less than 1.825.....	0.68
1.775 but less than 1.800.....	0.69
1.750 but less than 1.775.....	0.70
1.725 but less than 1.750.....	0.71
1.700 but less than 1.725.....	0.72
1.675 but less than 1.700.....	0.73
1.650 but less than 1.675.....	0.74
1.625 but less than 1.650.....	0.75
1.600 but less than 1.625.....	0.76
1.575 but less than 1.600.....	0.77
1.550 but less than 1.575.....	0.78
1.525 but less than 1.550.....	0.79
1.500 but less than 1.525.....	0.80
1.475 but less than 1.500.....	0.81
1.450 but less than 1.475.....	0.82
1.425 but less than 1.450.....	0.83
1.400 but less than 1.425.....	0.84
1.375 but less than 1.400.....	0.85
1.350 but less than 1.375.....	0.86
1.325 but less than 1.350.....	0.87
1.300 but less than 1.325.....	0.88
1.275 but less than 1.300.....	0.89
1.250 but less than 1.275.....	0.90
1.225 but less than 1.250.....	0.91
1.200 but less than 1.225.....	0.92
1.175 but less than 1.200.....	0.93

1.150 but less than 1.175.....	0.94
1.125 but less than 1.150.....	0.95
1.100 but less than 1.125.....	0.96
1.075 but less than 1.100.....	0.97
1.050 but less than 1.075.....	0.98
1.025 but less than 1.050.....	0.99
1.000 but less than 1.025.....	1.00
0.900 but less than 1.000.....	1.01
0.800 but less than 0.900.....	1.02
0.700 but less than 0.800.....	1.03
0.600 but less than 0.700.....	1.04
0.500 but less than 0.600.....	1.05
0.400 but less than 0.500.....	1.06
0.300 but less than 0.400.....	1.07
0.200 but less than 0.300.....	1.08
0.100 but less than 0.200.....	1.09
Less than 0.100%.....	1.10

(B) *Adjustment to taxable wages.* The planned yield as a percent of total wages, as determined in this subsection (a)(3), shall be adjusted to taxable wages by multiplying by the ratio of total wages to taxable wages for all contributing employers for the preceding fiscal year ending June 30, except, with regard to a year in which the taxable wage base changes. The taxable wages used in the calculation for such a year and the following year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during all of the preceding fiscal year ending June 30.

(C) *Effective rates.* (i) Except with regard to rates for negative account balance employers, employer contribution rates to be effective for the ensuing calendar year shall be computed by adjusting proportionately the experience factors from schedule I of this section to the required yield on taxable wages. For the purposes of this subsection (a)(3), all rates computed shall be rounded to the nearest .01% and for calendar year 1983 and ensuing calendar years, the maximum effective contribution rate shall not exceed 5.4%.

(ii) For rate year 2007 and subsequent rate years, employers who are current in filing quarterly wage reports and in payment of all contributions due and owing, shall be issued a contribution rate based upon the following reduction: for rate groups 1 through 5, the rates would be reduced to 0.00%; for rate groups 6 through 28, the rates would be reduced by 50%; for rate groups 29 through 51, the rates would be reduced by 40%.

(iii) In order to be eligible for the reduced rates for rate year 2007, the employer must file all late reports and pay all contributions due and owing within a 30 day period following the date of mailing of the amended rate notice.

(iv) In order to be eligible for the reduced rates for rate year 2008 and subsequent rate years, employers must file all reports due and pay all contributions due and owing on or before January 31 of the applicable year, except that the reduced rates for otherwise eligible employers shall not be effective for any rate year if the average high cost multiple of the employment security trust fund balance falls below 1.2 as of the computation date of that year's rates. For the purposes of this provision, the average high cost multiple is the reserve fund ratio, as defined by subsection (a)(3)(A), divided by the average high benefit cost rate. The average high benefit cost rate shall be determined by averaging the three highest benefit cost rates over the last 20 years from the preceding fiscal year which ended June 30. The high benefit cost rate is defined by dividing total benefits paid in the fiscal year by total payrolls for covered employers in the fiscal year.

(b) *Successor classification.* (1)(A) For the purposes of this subsection (b), whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703 and amendments thereto, becomes an employer pursuant to subsection (h)(4) of K.S.A. 44-703 and amendments thereto or is an employer at the time of acquisition and meets the definition of a "successor employer" as defined by subsection (dd) of K.S.A. 44-703 and amendments thereto and thereafter transfers its trade or business, or any portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. These factors consist of all contributions paid, benefit experience and annual payrolls of the predecessor employer. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(B) If, following a transfer of experience under subparagraph (A), the secretary determines, that a substantial purpose of the transfer or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(2) A successor employer as defined by subsection (h)

(4) or subsection (dd) of K.S.A. 44-703 and amendments thereto may receive the experience rating factors of the predecessor employer if an application is made to the secretary or the secretary's designee in writing within 120 days of the date of the transfer.

(3) Whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703 and amendments thereto, acquires or in any manner succeeds to a percentage of an employer's annual payroll which is less than 100% and intends to continue the acquired percentage as a going business, the employing unit may acquire the same percentage of the predecessor's experience factors if: (A) The predecessor employer and successor employing unit make an application in writing on the form prescribed by the secretary, (B) the application is submitted within 120 days of the date of the transfer, (C) the successor employing unit is or becomes an employer subject to this act immediately after the transfer, (D) the percentage of the experience rating factors transferred shall not be thereafter used in computing the contribution rate for the predecessor employer, and (E) the secretary finds that such transfer will not tend to defeat or obstruct the object and purposes of this act.

(4)(A) The rate of both employers in a full or partial successorship under paragraph (1) of this subsection shall be recalculated and made effective on the first day of the next calendar quarter following the date of transfer of trade or business.

(B) If a successor employer is determined to be qualified under paragraph, (2) or (3) of this subsection to receive the experience rating factors of the predecessor employer, the rate assigned the successor employer for the remainder of the contributions year shall be determined by the following:

(i) If the acquiring employing unit was an employer subject to this act prior to the date of the transfer, the rate of contribution shall be the same as the contribution rate of the acquiring employer on the date of the transfer.

(ii) If the acquiring employing unit was not an employer subject to this act prior to the date of the transfer, the successor employer shall have a newly computed rate for the remainder of the contribution year which shall be based on the transferred experience rating factors as they existed on the most recent computation date immediately preceding the date of acquisition. These experience rating factors consist of all contributions paid, benefit experience and annual payrolls.

(5) Whenever an employing unit is not an employer at the time it acquires the trade or business of an employer, the unemployment experience factors of the acquired

business shall not be transferred to such employing unit if the secretary finds that such employing unit acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such employing unit shall be assigned the applicable industry rate for a "new employer" as described in subsection (a) (1) of this section. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the secretary shall use objective factors which may include the cost of acquiring the business, whether the employer continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(6) Whenever an employer's account has been terminated as provided in subsections (d) and (e) of K.S.A. 44-711 and amendments thereto and the employer continues with employment to liquidate the business operations, that employer shall continue to be an "employer" subject to the employment security law as provided in subsection (h)(8) of K.S.A. 44-703 and amendments thereto. The rate of contribution from the date of transfer to the end of the then current calendar year shall be the same as the contribution rate prior to the date of the transfer. At the completion of the then current calendar year, the rate of contribution shall be that of a "new employer" as described in subsection (a) (1) of this section.

(7) No rate computation will be permitted an employing unit succeeding to the experience of another employing unit pursuant to this section for any period subsequent to such succession except in accordance with rules and regulations adopted by the secretary. Any such regulations shall be consistent with federal requirements for additional credit allowance in section 3303 of the federal internal revenue code of 1986, and consistent with the provisions of this act.

(c) *Voluntary contributions.* Notwithstanding any other provision of the employment security law, any employer may make voluntary payments for the purpose of reducing or maintaining a reduced rate in addition to the contributions required under this section. Such voluntary payments may be made only during the thirty-day period immediately following the date of mailing of experience rating notices for a calendar year. All such voluntary contribution payments shall be paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective. The amount of voluntary contributions shall be credited to the employer's account

as of the next preceding computation date and the employer's rate shall be computed accordingly, except that no employer's rate shall be reduced more than five rate groups as provided in schedule I of this section as the result of a voluntary payment. An employer not having a negative account balance may have such employer's rate reduced not more than five rate groups as provided in schedule I of this section as a result of a voluntary payment. An employer having a negative account balance may have such employer's rate reduced to that prescribed for rate group 51 of schedule I of this section by making a voluntary payment in the amount of such negative account balance or to that rate prescribed for rate groups 50 through 47 of schedule I of this section by making an additional voluntary payment that would increase such employer's reserve ratio to the lower limit required for such rate groups 50 through 47. Under no circumstances shall voluntary payments be refunded in whole or in part.

(d) As used in this section, "negative account balance employer" means an eligible employer whose total benefits charged to such employer's account for all past years have exceeded all contributions paid by such employer for all such years.

(e) There is hereby established in the state treasury, separate and apart from all public moneys or funds of this state, an employment security interest assessment fund, which shall be administered by the secretary as provided in this act. Moneys in the employment security fund established by K.S.A. 44-712, and amendments thereto, and employment security interest assessment fund established by 44-710, and amendments thereto, shall not be invested in the pooled money investment portfolio established under K.S.A. 75-4234, and amendments thereto. Notwithstanding the provisions of subsection (a) of K.S.A. 44-712, K.S.A. 44-716, K.S.A. 44-717 and K.S.A. 75-4234, and amendments thereto, or any like provision, the secretary shall remit all moneys received from employers pursuant to the interest payment assessment established in section (a)(2)(E), and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the employment security interest assessment fund. All moneys in this fund which are received from employers pursuant to the interest payment assessment established in section (a)(2)(E), and amendments thereto, shall be expended solely for the purposes and in the amounts found by the secretary necessary to pay any principal and interest due and owing the United States

department of labor resulting from any advancements made to the Kansas employment security fund pursuant to the provisions of title XII of the social security act (42 U.S.C. § 1321 to 1324) except as may be otherwise provided under section (a)(2)(E), and amendments thereto. Notwithstanding any provision of this section, all moneys received and credited to this fund pursuant to section (a)(2)(E), and amendments thereto, pursuant to section (a)(2)(E), and amendments thereto, shall remain part of the employment security interest assessment fund and shall be used only in accordance with the conditions specified in section (a)(2)(E), and amendments thereto.

(f) The secretary of labor shall annually prepare and submit a certification as to the solvency and adequacy of the amount credited to the state of Kansas' account in the federal employment security trust fund to the governor and the employment security advisory council. The certification shall be submitted on or before December 1 of each calendar year and shall be for the twelve-month period ending on June 30 of that calendar year. In arriving at the certification contributions paid on or before July 31 following the twelve-month period ending date of June 30 shall be considered. Each certification shall be used to determine the need for any adjustment to schedule III in subsection (a)(3)(A) and to assist in preparing legislation to accomplish any such adjustment.

History: L. 1945, ch. 220, § 6; L. 1947, ch. 291, § 4; L. 1949, ch. 288, § 6; L. 1955, ch. 251, § 4; L. 1957, ch. 296, § 1; L. 1959, ch. 223, § 5; L. 1963, ch. 277, § 1; L. 1971, ch. 180, § 5; L. 1972, ch. 192, § 3; L. 1973, ch. 205, § 7; L. 1974, ch. 205, § 2; L. 1975, ch. 261, § 2; L. 1976, ch. 370, § 63; L. 1978, ch. 192, § 1; L. 1978, ch. 193, § 1; L. 1979, ch. 160, § 1; L. 1982, ch. 215, § 3; L. 1983, ch. 169, § 5; L. 1983, ch. 170, § 3; L. 1984, ch. 183, § 3; L. 1984, ch. 184, § 6; L. 1987, ch. 191, § 6; L. 1989, ch. 150, § 4; L. 1990, ch. 186, § 5; L. 1993, ch. 251, § 6; L. 1995, ch. 71, § 1; L. 1995, ch. 239, § 1; L. 1996, ch. 21, § 1; L. 1997, ch. 43, § 1; L. 1998, ch. 33, § 1; L. 1999, ch. 167, § 3; L. 2001, ch. 139, § 4; July 1; L. 2004, Ch. 105 § 5, Ch. 179 § 60; L. 2005 ch. 138 § 2; L. 2007, ch. 16, § 3; L. 2011, ch. 85 § 6.

44-710b. Rate of contributions, benefit cost rate and benefit liability, notification; review and redetermination; judicial review; periodic notification of benefits charged. (a) *By the secretary of labor.* The secretary of labor shall promptly notify each contributing employer of its rate of contributions, each rated governmental employer of its benefit cost rate and each reimbursing employer of its benefit liability as determined for any calendar year pursuant to K.S.A. 44-710 and 44-710a, and amendments

thereto. Such determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the reasons therefor. If the secretary of labor grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving the employer's rate of contributions or benefit liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to subsection (c) of K.S.A. 44-710 and amendments thereto, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision or to any other proceedings under this act in which the character of such services was determined. Any such hearing conducted pursuant to this section shall be heard in the county where the contributing employer maintains its principle place of business. The hearing officer shall render a decision concerning all matters at issue in the hearing within 90 days.

(b) *Judicial review.* Any action of the secretary upon an employer's timely request for a review and redetermination of its rate of contributions or benefit liability, in accordance with subsection (a), is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. Any action for such review shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under subsection (i) of K.S.A. 44-709 and amendments thereto, and the workmen's compensation act.

(c) *Periodic notification of benefits charged.* The secretary of labor may provide by rules and regulations for periodic notification to employers of benefits paid and chargeable to their accounts or of the status of such accounts, and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the secretary of labor may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redeterminations, made after notice and opportunity for hearing, and the secretary's findings of facts in connection therewith may be introduced in any subsequent administrative or

judicial proceedings involving the determination of the rate of contributions of any employer for any calendar year and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact made by the secretary of labor in proceedings to redetermine the contribution rate of an employer. The review or any other proceedings relating thereto as provided for in this section may be heard by any duly authorized employee of the secretary of labor and such action shall have the same effect as if heard by the secretary.

History: L. 1945, ch. 220, § 7; L. 1971, ch. 180, § 6; L. 1973, ch. 205, § 8; L. 1976, ch. 370, § 64; L. 1977, ch. 181, § 5; L. 1986, ch. 318, § 60; L. 1997, ch. 182, § 80; July 3; L. 2004, Ch. 179 § 61; July 1.

44-710c.

History: L. 1951, ch. 307, § 4; Repealed, L. 1955, ch. 251, § 6; July 1.

44-710d. Governmental entities; election, mode of payment; rated governmental employer; rate computation; notice. (a) Governmental entities described in subsection (h)(3) of K.S.A. 44-703 and amendments thereto may elect to finance benefit payments as (1) a contributing employer, (2) a reimbursing employer or (3) a rated governmental employer.

(b) Any governmental entity identified in this section may elect to become a rated governmental employer for a period encompassing not less than four complete calendar years if such employer files with the secretary a written notice of such election within the thirty-day period immediately following January 1 of any calendar year or within a like period immediately following the date on which a determination of subjectivity to this act is issued, whichever occurs later.

(c) Any employer electing to become a rated governmental employer shall continue to be liable as a rated governmental employer until such employer files with the secretary a written notice terminating its election and not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

(d) A rated governmental employer shall report and make benefit cost payments based upon total wages paid during each calendar quarter.

(e) No rated governmental employer shall be eligible for a rate computed under subsection (g) of this section until there have been 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged

against such employer's account.

(f) Each employer who has not been subject to this act for a sufficient period of time to have a rate computed under this subsection shall make quarterly payments at a calendar year rate expressed as a percentage of total wages and shall be the same for all rated governmental employers not eligible for a computed rate. The rate for rated governmental employers not eligible for a computed rate will be based upon the actual cost experience (benefits paid divided by total wages) of all rated governmental employers during the prior fiscal year ending March 31.

(g) Rated governmental employers eligible for a rate computation shall make quarterly payments at a calendar year rate determined by the experience of all rated governmental employers and the individual employer's experience. The rate shall be computed by the following method:

(1) An adjustment factor rounded to two decimal places shall be computed for all rated governmental employers by dividing total benefits paid by total benefits charged, reported by all rated governmental employers for the preceding fiscal year ending March 31;

(2) An experience factor, stated as a percent rounded to two decimal places, shall be computed for each eligible rated governmental employer by dividing benefits charged to such employer's account for the preceding fiscal year ending March 31, by the average of such employer's total wages reported for the two preceding fiscal years ending March 31;

(3) Benefit cost rates to be effective for the ensuing calendar year shall be computed by multiplying the experience factor determined in paragraph (2) of this subsection, by the adjustment factor determined in paragraph (1) of this subsection, rounding to the nearest .01%, except that no rated governmental employer's rate for any calendar year will be less than .1%.

(h) Whenever any governmental entity which acquires or in any manner succeeds to all the employment of another governmental entity and both the predecessor and successor have selected the same payment option, the successor shall acquire the experience rating account factors of the predecessor employer. Contributing employer's experience rating account factors consist of the actual contribution and benefit experience and annual payrolls while the rated governmental employer's experience rating account factors consist of the actual benefit experience and annual payrolls. If the successor employing unit was an employer subject to this act prior to the date of acquisition, the contribution

rate or benefit cost rate for the period from such date to the end of the then current calendar year shall be the same as the rate with respect to the period immediately preceding the date of acquisition. If the successor was not an employer prior to the date of acquisition, the rate shall be the rate applicable to the predecessor employer or employers with respect to the period immediately preceding the date of acquisition provided there was only one predecessor or there were only predecessors with identical rates. In the event that the predecessors' rates are not identical, the successor's rate shall be a newly computed rate based upon the combined experience of the predecessors as of the computation date immediately preceding the date of acquisition.

(i) Benefit payments shall be charged to the account of each rated governmental employer in accordance with subsection (c) of K.S.A. 44-710 and amendments thereto.

(j) The secretary shall promptly notify each rated governmental employer of such employer's rate for the calendar year, which will become final unless an application for review and redetermination is filed in accordance with subsection (b) of K.S.A. 44-710 and amendments thereto.

(k) Rated governmental employers shall make benefit cost payments each calendar quarter. Payments shall be computed by multiplying total wages by the benefit cost rate. Payment of benefit cost payments for any calendar quarter which amounts to less than \$5 shall not be required.

History: L. 1977, ch. 181, § 7; L. 1979, ch. 159, § 5; L. 1981, ch. 206, § 1; L. 1981, ch. 205, § 2; July 1.

44-710e. Governmental entities; tax levy, use of proceeds; employee benefits contribution fund.

Any city, county, school district or other governmental entity is hereby authorized to budget and pay the cost of providing unemployment insurance benefits for its employees as provided by this act from the various funds from which compensation is paid to its employees, and, if otherwise authorized by law to levy taxes, any such city, county or other governmental entity, except a school district, may levy annually an additional tax therefor, which, together with any other funds available, shall be sufficient to provide the cost thereof and, in the case of cities and counties, to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. Any taxing subdivision authorized to levy a tax under this section, in lieu of levying such tax, may pay such costs from any employee benefits

contribution fund established pursuant to K.S.A. 12-16,102, and amendments thereto.

History: L. 1977, ch. 181, § 8; L. 1978, ch. 296, § 16; L. 1978, ch. 163, § 6; L. 1979, ch. 52, § 154; L. 1990, ch. 66, § 41; May 31.

44-710f. Counties to provide coverage for certain district court employees. Any county plan pursuant to the employment security law shall include coverage for district court officers and employees whose total salary is payable by counties.

History: L. 1977, ch. 110, § 7; July 1.

44-710g.

History: L. 1983, ch. 170, § 4; Repealed, L. 1986, ch. 191, § 8; July 1.

44-710h.

History: L. 1983, ch. 169, § 4; Repealed, L. 1986, ch. 191, § 8; July 1.

44-710i. Common paymaster; wages actually disbursed by employer. For all purposes under the employment security law, whenever two or more employers which are related corporations, which concurrently employ the same individual in employment and which pay wages to such individual through a common paymaster and such common paymaster is one of such employers, each such employer shall be considered to have paid wages to such individual only in the amount of wages actually disbursed by such employer to such individual and such employer shall not be considered to have paid any amount of wages to such individual which was actually disbursed to such individual by another of such employers which concurrently employ such individual. This section shall be construed as part of the employment security law.

History: L. 1983, ch. 163, § 1; July 1.

44-711. Period of liability for contributions; election and termination of employer coverage; exceptions; document copies, fees. (a) *Period of liability for contributions.* Any employing unit which is or becomes an employer subject to this act within any calendar year shall be subject for all wages paid during the whole of such calendar year.

(b) *Termination of liability.* Except as otherwise provided in subsection (c) of this section, an employing unit shall cease to be an employer subject to this act only as of the first day of January of any calendar year, if it files with the secretary of labor, prior to the first day

of May of such calendar year, a written application for termination of coverage and the secretary of labor finds that within the preceding calendar year the employing unit would not have been subject to this act except for paragraph (6) of subsection (h) of K.S.A. 44-703 and amendments thereto, and has been covered by this act throughout the most recently completed calendar year. The secretary of labor may at any time on the secretary's own initiative terminate the status of any employing unit as an employer subject to this law when satisfied that such employer has had no individuals in employment at any time during the three preceding calendar years.

(c) *Election and termination.* (1) An employing unit, not otherwise subject to this act, which files with the secretary of labor its written election to become an employer subject hereto for not less than two calendar years shall, with approval of such election by the secretary of labor, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years only if prior to the first day of May of such year it has filed with the secretary of labor a written application for termination.

(2) Any employing unit, for which services that do not constitute employment as defined in this act are performed, may file with the secretary of labor a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than two calendar years. Upon approval of such election by the secretary of labor, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the first day of May of such year such employing unit has filed with the secretary of labor a written application for termination.

(d) *Termination upon total transfer of experience rating.* Notwithstanding the provisions of subsection (a) of this section, upon transfer of an experience rating account in accordance with subsections (b)(1) or (b)(2) of K.S.A. 44-710a and amendments thereto, the predecessor employer shall automatically cease to be an employer subject to this act as of the date of transfer to the successor.

(e) *Termination of account due to successorship.*

Notwithstanding the provisions of subsection (a) of this section, an employer's account shall be terminated when the business is acquired by a successor as provided in subsection (h)(4) of K.S.A. 44-703 and amendments thereto or by a nonemploying unit. The account will be terminated as of the date of the acquisition.

History: L. 1937, ch. 255, § 11; L. 1938, ch. 51, § 2; L. 1941, ch. 264, § 8; L. 1945, ch. 220, § 8; L. 1949, ch. 288, § 7; L. 1951, ch. 307, § 5; L. 1955, ch. 251, § 5; L. 1971, ch. 180, § 7; L. 1973, ch. 205, § 9; L. 1976, ch. 370, § 65; L. 1977, ch. 181, § 6; L. 1983, ch. 169, § 6; Feb. 24; L. 2004, Ch. 179, § 62; July 1.

44-712. Employment security fund. (a) *Establishment and control.* There is hereby established as a special fund in the state treasury, separate and apart from all public moneys or funds of this state, an employment security fund, which shall be administered by the secretary as provided in this act. This fund shall consist of: (1) All contributions collected under this act; (2) interest earned upon any moneys in the fund; (3) all moneys credited to this state's account in the federal unemployment trust fund, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended; (4) any property or securities acquired through the use of moneys belonging to the fund, and all other moneys received for the fund from any other source; (5) all earnings of such property or securities. All moneys in this fund shall be mingled and undivided.

(b) *Accounts and deposits.* The state treasurer shall be ex officio custodian of the fund. Payments from the fund, and for the purposes of this act deposits with the secretary of the treasury of the United States shall not be deemed to be payments from the fund, shall be made vouchers by any commercially-accepted means approved by the secretary. There shall be maintained within the fund three separate accounts: (1) A clearing account; (2) an unemployment trust fund account, and (3) a benefit account. All money payable to the fund upon receipt thereof by the secretary, shall be forwarded to the state treasurer, who shall immediately deposit them in the state treasury to the credit of the clearing account of the fund. Refunds payable pursuant to K.S.A. 44-717 and amendments thereto may be paid from the clearing account of the fund by any commercially-accepted means approved by the secretary. After clearance thereof, all other moneys in the clearing account of the fund shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the federal unemployment trust fund

established and maintained pursuant to section 904 of the social security act, 42 U.S.C.A. § 1104, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account of the fund shall consist of all moneys requisitioned from this state's account in the federal unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts of the fund may be deposited by the state treasurer in any bank or public depository as is now provided by law for the deposit of general funds of the state, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts of the fund shall not be commingled with other state funds and shall be maintained in separate bank accounts.

(c) *Withdrawals.* Moneys shall be requisitioned from this state's account in the federal unemployment trust fund solely for the payment of benefits and in accordance with the provisions of this act and the rules and regulations adopted by the secretary, except that moneys credited to this state's account pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, shall be used exclusively as provided in subsection (d) of this section. The secretary shall from time to time requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as deemed necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the state treasurer shall deposit such moneys in the benefit account of the fund and payments of benefits shall be charged solely against such benefit account of the fund. Expenditures of such moneys in the benefit account and refunds from the clearing account of the fund shall not be subject to any provisions of law requiring specific appropriations. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account of the fund after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the secretary shall be directed to be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the federal unemployment trust fund, as provided in subsection (b) of this section. All balances accrued from unpaid or canceled warrants issued pursuant to this section, notwithstanding the provisions of K.S.A. 10-812 and

amendments thereto shall remain in the benefit account of the fund, and be disbursed in accordance with the provisions of this act relating to such account.

(d) *Administrative use.* (1) Money credited to the account of this state in the federal unemployment trust fund by the secretary of the treasury of the United States of America, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may be requisitioned and used for the payment of expenses incurred in the administration of this act pursuant to a specific appropriation by the legislature, if expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (C) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, (ii) the aggregate of the amounts obligated pursuant to this subsection and amounts paid out for benefits and charged against the amounts credited to the account of this state. For the purposes of this subsection, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged.

(2) Money credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may not be withdrawn or obligated except for the payment of benefits and for the payment of expenses for the administration of this act and of public employment offices pursuant to this subsection (d).

(3) Money appropriated as provided by this subsection (d) for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition shall be deposited in the state treasury to the credit of the employment security administration fund from which such payments shall be made. Money so deposited and credited shall, until expended, remain a part of the federal unemployment trust fund, and, if it will not be expended, shall be returned promptly to the account of this state in the federal unemployment trust fund.

(4) Notwithstanding paragraph (1), money credited

with respect to federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program, and such money shall not otherwise be subject to the requirements of paragraph (1) when appropriated by the legislature.

(e) *Management of funds upon discontinuance of federal unemployment trust fund.* The provisions of subsections (a), (b), (c) and (d) of this section, to the extent that they relate to the federal unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the employment security fund of this state, shall be transferred to the state treasurer, to be administered by the secretary as a trust fund for the purpose of paying benefits under this act, and the director of investments upon the direction of the secretary shall have authority to hold, invest, transfer, sell, deposit, and release such moneys, and any properties, securities, or earnings acquired as an incident to such administration.

(f) Loans from the pooled money investment board, when authorized. (1) Pursuant to K.S.A. 2010 Supp. 75-4209(d), and amendments thereto, the pooled money investment board is hereby authorized and directed to make loans as requested by the secretary of labor to fund debt obligations to the federal government as may have been, or continue to be, incurred by the employment security fund.

(A) The line of credit so extended shall be at an interest rate not to exceed 2%; and

(B) shall remain in effect for a period of three years from the date of the first loan requested. The pooled money investment board may reauthorize this line of credit following the initial three year period if deemed mutually beneficial by the board and the secretary of labor.

(2) The secretary of labor is hereby authorized to request and receive loans from the pooled money investment fund for the purposes described herein.

(3) The outstanding balances of such loans in the aggregate shall not exceed the limit imposed by K.S.A. 2010 Supp. 75-4209(d), and amendments thereto.

(4) Any such loan shall not be deemed to be an indebtedness or debt of the state of Kansas within the meaning of section 6 of article 11 of the constitution of the state of Kansas.

(5) The pooled money investment board, secretary of labor, and state treasurer shall coordinate as needed to make the appropriate transfers and payment of moneys anticipated hereunder.

History: L. 1937, ch. 255, § 12; L. 1939, ch. 214, § 4; L. 1941, ch. 264, § 9; L. 1945, ch. 220, § 9; L. 1947, ch. 291, § 5; L. 1949, ch. 288, § 8; L. 1957, ch. 296, § 2; L. 1965, ch. 321, § 1; L. 1969, ch. 247, § 1; L. 1974, ch. 206, § 1; L. 1976, ch. 370, § 66; L. 1983, ch. 170, § 1; L. 1987, ch. 191, § 7; L. 1992, ch. 74, § 3; L. 1996, ch. 254, § 10; L. 1998, ch. 124, § 3; L. 2001, ch. 5, § 141; L. 2007, ch. 132, § 2; L. 2011, ch. 85, § 8.

44-713. Merit awards for certain employees.

The secretary of labor, in recognition of meritorious service by individual employees who serve in the administration of the employment security law and who receive a preponderant share of their compensation through the employment security administration fund, is hereby authorized to make meritorious service awards, including the presentation of a service award pin and certificate to each of such employees when he or she has served in such administration a minimum of ten (10) years. The secretary may also present to each of such employees an additional pin and certificate for each additional five (5) year period of satisfactory service in the administration of said law. The cost of each such pin and certificate shall be paid from the employment security administration fund in the same manner as other expenses of administering the employment security law are paid.

History: L. 1937, ch. 255, § 13; L. 1941, ch. 264, § 10; L. 1947, ch. 291, § 6; L. 1953, ch. 248, § 1; L. 1959, ch. 223, § 6; L. 1961, ch. 246, § 1; L. 1967, ch. 282, § 1; L. 1970, ch. 191, § 7; L. 1974, ch. 361, § 60; L. 1976, ch. 357, § 2; L. 1976, ch. 370, § 67; July 1; L. 2004, Ch. 179 § 63; July 1.

44-713a. In-service training. Pursuant to 42 U.S.C.A. 1101 et seq., the secretary of labor may accept assistance from the secretary of labor to conduct in-service training either directly or through contracts with institutions of higher education or other qualified agencies, organizations or institutions, to conduct programs and courses designed to train individuals to prepare them or improve their qualifications for service in the administration of Kansas employment security programs.

History: L. 1971, ch. 180, § 9; L. 1976, ch. 370, § 68; July 1; L. 2004, Ch. 179 § 64; July 1.

44-714. Administration of act; powers and duties of secretary; employees; certain political activities prohibited, penalties; advisory councils; reports and records, confidentiality; witnesses, oaths and subpoenas; state-federal cooperation; fees for document copies. (a) Duties and powers of secretary.

It shall be the duty of the secretary to administer this act and the secretary shall have power and authority to adopt, amend or revoke such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the secretary deems necessary or suitable to that end. Such rules and regulations may be adopted, amended, or revoked by the secretary only after public hearing or opportunity to be heard thereon. The secretary shall determine the organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. The secretary shall make and submit reports for the administration of the employment security law in the manner prescribed by K.S.A. 75-3044 to 75-3046, inclusive, and 75-3048 and amendments thereto. Whenever the secretary believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, the secretary shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

(b) *Publication.* The secretary shall cause to be printed for distribution to the public the text of this act, the secretary's rules and regulations and any other material the secretary deems relevant and suitable and shall furnish the same to any person upon application therefor.

(c) *Personnel.* (1) Subject to other provisions of this act, the secretary is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, deputies, attorneys, experts and other persons as may be necessary in carrying out the provisions of this act. The secretary shall classify all positions and shall establish salary schedules and minimum personnel standards for the positions so classified. The secretary shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and, except to temporary appointments not to exceed six months in duration, shall appoint all personnel on the basis of efficiency and fitness as determined in such

examinations. The secretary shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for a partisan elective public office. The secretary shall adopt and enforce fair and reasonable rules and regulations for appointment, promotions and demotions, based upon ratings of efficiency and fitness and for terminations for cause. The secretary may delegate to any such person so appointed such power and authority as the secretary deems reasonable and proper for the effective administration of this act, and may in the secretary's discretion bond any person handling moneys or signing checks under the employment security law.

(2) No employee engaged in the administration of the employment security law shall directly or indirectly solicit or receive or be in any manner concerned with soliciting or receiving any assistance, subscription or contribution for any political party or political purpose, other than soliciting and receiving contributions for such person's personal campaign as a candidate for a nonpartisan elective public office, nor shall any employee engaged in the administration of the employment security law participate in any form of political activity except as a candidate for a nonpartisan elective public office, nor shall any employee champion the cause of any political party or the candidacy of any person other than such person's own personal candidacy for a nonpartisan elective public office. Any employee engaged in the administration of the employment security law who violates these provisions shall be immediately discharged. No person shall solicit or receive any contribution for any political purpose from any employee engaged in the administration of the employment security law and any such action shall be a misdemeanor and shall be punishable by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for not less than 30 days nor more than six months, or both.

(d) *Advisory councils.* The secretary shall appoint a state employment security advisory council and may appoint local advisory councils, composed in each case of men and women which shall include an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the secretary may designate. Each such member shall serve a four-year term. On July 1, 1996, the secretary shall designate term lengths for seated members of the council. One-half of the

seated members representing employers, 1/2 of the seated members representing employees and 1/2 of the members representing the general public shall be designated by the secretary to serve two-year terms. The remaining seated members of the council shall be designated to serve four-year terms. When the term of any member expires, the secretary shall appoint the member's successor to a four-year term. If a position on the council becomes vacant prior to the expiration of the vacating member's term, the secretary may appoint an otherwise qualified individual to fulfill the remainder of such unexpired term. Such councils shall aid the secretary in formulating policies and discussing problems related to the administration of this act and in securing impartiality and freedom from political influence in the solution of such problems. Members of the state employment security advisory council attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto. Service on the state employment security advisory council shall not in and of itself be sufficient to cause any member of the state employment security advisory council to be classified as a state officer or employee.

(e) *Employment stabilization.* The secretary, with the advice and aid of the secretary's advisory councils and through the appropriate divisions of the department of labor, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts and the state, of reserves for public works to be used in time of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(f) *Records and reports.* Each employing unit shall keep true and accurate work records, containing such information as the secretary may prescribe. Such records shall be open to inspection and subject to being copied by the secretary or the secretary's authorized representatives at any reasonable time and shall be preserved for a period of five years from the due date of the contributions or payments in lieu of contributions for the period to which they relate. Only one audit shall be made of any employer's records for any given period of time. Upon request the employing

unit shall be furnished a copy of all findings by the secretary or the secretary's authorized representatives, resulting from such audit. A special inquiry or special examination made for a specific and limited purpose shall not be considered to be an audit for the purpose of this subsection. The secretary may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the secretary deems necessary for the effective administration of this act. Information thus obtained or obtained from any individual pursuant to the administration of this act shall be held confidential, except to the extent necessary for the proper presentation of a claim by an employer or employee under the employment security law, and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity. Any claimant or employing unit or their representatives at a hearing before an appeal tribunal or the secretary shall be supplied with information from such records to the extent necessary for the proper presentation of the claim. The transcript made at any such benefits hearing shall not be discoverable or admissible in evidence in any other proceeding, hearing or determination of any kind or nature. In the event of any appeal of a benefits matter, the transcript shall be sealed by the hearing officer and shall be available only to any reviewing authority who shall reseal the transcript after making a review of it. In no event shall such transcript be deemed a public record. Nothing in this subsection (f) shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, upon request of either of the parties, for the purpose of administering or adjudicating a claim for benefits under the provisions of any other state program, except that any party receiving such information shall be prohibited from further disclosure and shall be subject to the same duty of confidentiality otherwise imposed by this subsection (f) and shall be subject to the penalties imposed by this subsection (f) for violations of such duty of confidentiality. Nothing in this subsection (f) shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, for use as evidence in open court in a criminal prosecution for perjury at an appeal hearing under the employment security law or for any criminal violation of the employment security law. If the secretary or any officer or employee of the secretary violates any provisions of this subsection (f),

the secretary or such officer or employee shall be fined not less than \$20 nor more than \$200 or imprisoned for not longer than 90 days, or both. Original records of the agency and original paid benefit warrants of the state treasurer may be made available to the employment security agency of any other state or the federal government to be used as evidence in prosecution of violations of the employment security law of such state or federal government. Photostatic copies of such records shall be made and where possible shall be substituted for original records introduced in evidence and the originals returned to the agency.

(g) *Oaths and witnesses.* In the discharge of the duties imposed by the employment security law, the chairperson of an appeal tribunal, an appeals referee, the secretary or any duly authorized representative of the secretary shall have power to administer oaths and affirmations, take depositions, issue interrogatories, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of the employment security law.

(h) *Subpoenas, service.* Upon request, service of subpoenas shall be made by the sheriff of a county within that county, by the sheriff's deputy, by any other person who is not a party and is not less than 18 years of age or by some person specially appointed for that purpose by the secretary of labor or the secretary's designee. A person not a party as described above or a person specially appointed by the secretary or the secretary's designee to serve subpoenas may make service any place in the state. The subpoena shall be served as follows:

(1) *Individual.* Service upon an individual, other than a minor or incapacitated person, shall be made (A) by delivering a copy of the subpoena to the individual personally, (B) by leaving a copy at such individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, (C) by leaving a copy at the business establishment of the employer with an officer or employee of the establishment, (D) by delivering a copy to an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by a statute to receive service, such further notice as the statute requires shall be given, or (E) if service as prescribed above in clauses (A), (B), (C) or (D) cannot be made with due diligence, by leaving a copy of the subpoena at the individual's dwelling house,

usual place of abode or usual business establishment, and by mailing a notice by first-class mail to the place that the copy has been left.

(2) *Corporations and partnerships.* Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when by law it may be sued as such, shall be made by delivering a copy of the subpoena to an officer, partner or resident managing or general agent thereof, or by leaving the copy at any business office of the employer with the person having charge thereof or by delivering a copy to any other agent authorized by appointment or required by law to receive service of process, if the agent is one authorized by law to receive service and, if the law so requires, by also mailing a copy to the employer.

(3) *Refusal to accept service.* In all cases when the person to be served, or an agent authorized by such person to accept service of petitions and summonses shall refuse to receive copies of the subpoena, the offer of the duly authorized process server to deliver copies thereof and such refusal shall be sufficient service of such subpoena.

(4) *Proof of service.* (A) Every officer to whom a subpoena or other process shall be delivered for service within or without the state, shall make return thereof in writing stating the time, place and manner of service of such writ and shall sign such officer's name to such return.

(B) If service of the subpoena is made by a person appointed by the secretary or the secretary's designee to make service, or any other person described in subsection (h) of this section, such person shall make an affidavit as to the time, place and manner of service thereof in a form prescribed by the secretary or the secretary's designee.

(5) *Time for return.* The officer or other person receiving a subpoena shall make a return of service promptly and shall send such return to the secretary or the secretary's designee in any event within 10 days after the service is effected. If the subpoena cannot be served it shall be returned to the secretary or the secretary's designee within 30 days after the date of issue with a statement of the reason for the failure to serve the same.

(i) *Subpoenas, enforcement.* In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which such person guilty of contumacy or refusal to obey is found, resides or transacts business, upon application by the secretary or the secretary's duly authorized representative, shall have jurisdiction to issue to

such person an order requiring such person to appear before the secretary, or the secretary's duly authorized representative, to produce evidence, if so ordered, or to give testimony relating to the matter under investigation or in question. Failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda or other records in obedience to the subpoena of the secretary or the secretary's duly authorized representative shall be punished by a fine of not less than \$200 or by imprisonment of not longer than 60 days, or both, and each day such violation continued shall be deemed to be a separate offense.

(j) *State-federal cooperation.* In the administration of this act, the secretary shall cooperate to the fullest extent consistent with the provisions of this act, with the federal security agency, shall make such reports, in such form and containing such information as the federal security administrator may from time to time require, and shall comply with such provisions as the federal security administrator may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the federal security agency governing the expenditures of such sums as may be allotted and paid to this state under title III of the social security act for the purpose of assisting in the administration of this act. Upon request therefor the secretary shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

(k) *Reciprocal arrangements.* The secretary shall participate in making reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

(1) Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (A) in which any part of such individual's service is performed, (B) in which such individual maintains residence, or (C) in which the employing unit maintains a place of business, provided there is in effect as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services

performed by such individual for such employing units are deemed to be performed entirely within such state;

(2) service performed by not more than three individuals, on any portion of a day but not necessarily simultaneously, for a single employing unit which customarily operates in more than one state shall be deemed to be service performed entirely within the state in which such employing unit maintains the headquarters of its business; provided that there is in effect, as to such service, an approved election by an employing unit with the affirmative consent of each such individual, pursuant to which service performed by such individual for such employing unit is deemed to be performed entirely within such state;

(3) potential rights to benefits accumulated under the employment compensation laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payments of benefits through a single appropriate agency under terms which the secretary finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(4) wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining such individual's rights to benefits under this act, and wages for insured work, on the basis of which an individual may become entitled to benefits under this act, shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this act upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the secretary finds will be fair and reasonable as to all affected interests; and

(5)(A) contributions due under this act with respect to wages for insured work shall be deemed for the purposes of K.S.A. 44-717 and amendments thereto to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursements to the fund of such contributions and the actual earnings thereon as the secretary finds will be fair and reasonable as to all

affected interests;

(B) reimbursements paid from the fund pursuant to subsection (1)(4) of this section shall be deemed to be benefits for the purpose of K.S.A. 44-704 and 44-712 and amendments thereto; the secretary is authorized to make to other state or federal agencies, and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to the provisions of this section or any other section of the employment security law;

(C) the administration of this act and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services and in making available facilities and information; the secretary is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this act as the secretary deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law and, in like manner, to accept and utilize information, service and facilities made available to this state by the agency charged with the administration of any such other unemployment compensation or public employment service law; and

(D) to the extent permissible under the laws and constitution of the United States, the secretary is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this act and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.

(1) *Records available.* The secretary may furnish the railroad retirement board, at the expense of such board, such copies of the records as the railroad retirement board deems necessary for its purposes.

(m) *Destruction of records, reproduction and disposition.* The secretary may provide for the destruction, reproduction, temporary or permanent retention, and disposition of records, reports and claims in the secretary's possession pursuant to the administration of the employment security law provided that prior to any destruction of such records, reports or claims the secretary shall comply with K.S.A. 75-3501

to 75-3514, inclusive, and amendments thereto.

(n) *Federal cooperation.* The secretary may afford reasonable cooperation with every agency of the United States charged with administration of any unemployment insurance law.

(o) The secretary is hereby authorized to fix, charge and collect fees for copies made of public documents, as defined by subsection (c) of K.S.A. 45-204 and amendments thereto, by xerographic, thermographic or other photocopying or reproduction process, in order to recover all or part of the actual costs incurred, including any costs incurred in certifying such copies. All moneys received from fees charged for copies of such documents shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the employment security administration fund. No such fees shall be charged or collected for copies of documents that are made pursuant to a statute which requires such copies to be furnished without expense.

History: L. 1937, ch. 255, § 14; L. 1939, ch. 214, § 5; L. 1941, ch. 264, § 11; L. 1943, ch. 190, § 6; L. 1945, ch. 220, § 11; L. 1947, ch. 291, § 7; L. 1949, ch. 288, § 9; L. 1951, ch. 307, § 6; L. 1965, ch. 506, § 24; L. 1965, ch. 322, § 1; L. 1973, ch. 205, § 10; L. 1974, ch. 348, § 16; L. 1975, ch. 416, § 4; L. 1976, ch. 370, § 69; L. 1979, ch. 159, § 6; L. 1983, ch. 169, § 7; L. 1986, ch. 191, § 4; L. 1987, ch. 191, § 8; L. 1990, ch. 122, § 17; L. 1991, ch. 145, § 2; L. 1996, ch. 232, § 4; July 1. L. 2001, ch. 5, § 142; July 1; L. 2004 Ch. 179 § 65; July 1.

44-715. Kansas state employment service; officers and employees; appointments; powers and duties.

(a) *State employment service.* The secretary of labor shall establish and maintain employment offices in such number and in such places as may be necessary for the proper administration of this act and for the purposes of performing such duties as are within the purview of the act of congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C., title 29, sec. 49 (c) as amended). The secretary of labor shall be charged with the duty of cooperating with any official or agency of the United States having powers or duties under the provisions of said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of said act of congress, as amended, in the promotion and maintenance of a system of employment offices.

The provisions of said act of congress, as amended, are hereby accepted by this state, in conformity with said act, and this state will observe and comply with the requirements thereof. The secretary of labor is hereby designated and constituted the agency of this state for the purpose of said act. The secretary of labor shall appoint such officers and employees as may be necessary for the administration of the act of which this section is amendatory. Such appointments shall be made in accordance with regulations prescribed by the director of the United States employment service. The secretary of labor may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities.

(b) *Financing.* All moneys received by this state under said act of congress, as amended, shall be paid into the employment security administration fund, and said moneys are hereby made available to the secretary of labor to be expended as provided by this section and by said act of congress. For the purpose of establishing and maintaining free public employment offices, said secretary is authorized to enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state or with any private nonprofit organization, and as a part of any such agreement the secretary of labor may accept moneys, services, or quarters as a contribution to the employment service account, and the political subdivisions of this state are hereby authorized to raise and expend moneys, services, or quarters as contribution to the employment service account.

History: L. 1937, ch. 255, § 15; L. 1938, ch. 51, § 3; L. 1939, ch. 214, § 6; L. 1941, ch. 264, § 12; L. 1947, ch. 291, § 8; L. 1949, ch. 288, § 10; L. 1976, ch. 370, § 70; July 1; L. 2004, Ch. 179 § 66; July 1.

44-716. Employment security administration fund.

(a) *Special fund.* There is hereby created in the state treasury a special fund to be known as the employment security administration fund. All moneys in this fund which are received from the federal government or any agency thereof, except money received pursuant to subsection (d) of K.S.A. 44-712, and amendments thereof, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this act. The fund shall consist of all moneys appropriated by this state and all moneys received from the United

States of America, or any agency thereof, including the federal security agency, the railroad retirement board, and any proceeds realized from the sale or disposition of any equipment or supplies which may no longer be necessary for the proper administration of this act, or from any other source, for such purposes, except that moneys received from the railroad retirement board or from any other state as compensation for services or facilities supplied to said board shall be paid into this fund on the same basis as expenditures are made for such service or facilities from such fund. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. All balances accrued from unpaid or canceled warrants issued pursuant to this section, notwithstanding the provisions of K.S.A. 10-812, shall remain in the employment security administration fund, and be disbursed in accordance with the provisions of this act relating to such account. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to subsection (d) of K.S.A. 44-712, and amendments thereof, shall remain part of the employment security administration fund and shall be used only in accordance with the conditions specified in subsection (d) of K.S.A. 44-712, and amendments thereof.

(b) *Appropriations.* There shall be appropriated to the employment security administration fund, from any moneys in the state treasury not otherwise appropriated, the sum necessary to match the amount as may be provided and granted to this state under the provisions of said act of congress entitled "an act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C., title 29, sec. 49 (cl) as amended). Pursuant to an estimate by the secretary of labor of the amount of money required during the ensuing calendar quarter from the sums appropriated, such amount shall be credited to the administration fund at the beginning of each quarter, and additional amounts may be credited by special request of the secretary of labor. The director of accounts and reports is hereby authorized and directed to draw warrants upon the treasurer of the state for the amounts appropriated upon vouchers approved by the secretary of labor.

(c) *Reimbursement of fund.* This state recognizes its obligation to replace, and hereby pledges the faith of

this state that funds will be provided in the future, and applied to the replacement of, any moneys received after July 1, 1941, from the federal security agency under title III of the social security act, pursuant to the provisions of section 303 (a) 8 and 9 of the social security act, as amended, which the federal security administrator finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the federal security administrator to the proper administration of this act. Such moneys shall be promptly replaced by moneys appropriated for such purpose from the general funds of this state to the employment security administration fund for expenditures as provided in subsection (a) of this section. The secretary of labor shall promptly report to the governor, to the legislature, the amount required for such replacement. In the event the said section 303 (a) 8 and 9 of the social security act is repealed or held inoperative for any reason whatsoever then this paragraph shall be null and void.

History: L. 1937, ch. 255, § 16; L. 1939, ch. 214, § 7; L. 1941, ch. 264, § 13; L. 1947, ch. 291, § 9; L. 1949, ch. 288, § 11; L. 1957, ch. 296, § 3; L. 1965, ch. 86, § 2; L. 1976, ch. 370, § 71; July 1; L. 2004, Ch. 179 § 67; July 1.

44-716a. Special employment security fund; creation; authorized expenditures and transfers. (a)

There is hereby created in the state treasury a special fund to be known as the special employment security fund. All interest and penalties collected under the provisions of the Kansas employment security law shall be paid into this fund. No such moneys shall be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which in the absence of such moneys would be available to finance expenditures for the administration of the employment security law. Nothing in this section shall prevent such moneys from being used as a revolving fund, to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Except as otherwise authorized by this section or by appropriations act, the moneys in this fund may be used by the secretary of labor only for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants, or other funds, received for or in the employment security administration fund. In addition to the other

purposes for which expenditures may be made from the special employment security fund as authorized by this section or by appropriations act, moneys from this fund may be used to finance activities as deemed necessary by the secretary of labor for the efficient operation of activities under or the administration of the employment security law, except that (1) no moneys shall be used for such purposes unless the secretary has determined that no other funds are available or can be properly used to finance expenditures for such purposes, and (2) expenditures during any fiscal year for purposes authorized under this section shall not exceed \$110,000 except upon approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed by subsection (c) of K.S.A. 75-3711c and amendments thereto. No expenditures of this fund shall be made except on written authorization by the governor and the secretary of labor.

(b) The director of accounts and reports is hereby directed to draw warrants upon the state treasurer against the money in the special employment security fund for the use and purposes authorized under this section upon vouchers, approved by the secretary of labor, and accompanied by the written authorization of the governor and the secretary of labor. The moneys in this fund are hereby specifically made available to replace, within a reasonable time, any moneys received by this state pursuant to section 302 of the federal social security act, as amended, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the employment security law. The moneys in this fund shall be continuously available to the secretary of labor for expenditure in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund, except as otherwise authorized in subsection (c) or subsection (d).

(c) In addition to expenditures authorized by this section, the director of accounts and reports may transfer funds from the special employment security fund to the accounting services recovery fund as provided in K.S.A. 75-3728b and 75-6210 and amendments thereto.

(d) In addition to expenditures authorized by this section, the director of accounts and reports is directed and authorized to transfer funds from the special employment security fund to the department of labor

federal indirect cost offset fund on July 1 of each year in the amount contained in appropriation bills to be expended from the federal indirect cost offset fund for that fiscal year.

(e) In addition to expenditures authorized by this section, the director of accounts and reports is directed and authorized to transfer funds from the special employment security fund to the clearing account of the employment security fund to be expended in the payment of interest due employers from erroneously collected contributions or benefit cost payments as provided in subsection (h) of K.S.A. 44-717 and amendments thereto.

(f) In addition to expenditures authorized by this section, the director of accounts and reports is directed and authorized to transfer funds from the special employment security fund to the clearing account of the employment security fund to be expended in the payment of fees assessed for the electronic payments or credit card payments of contributions, benefit cost payments or reimbursing payments in lieu of contributions from employers.

History: L. 1945, ch. 220, § 10; L. 1947, ch. 291, § 10; L. 1949, ch. 288, § 12; L. 1957, ch. 297, § 7; L. 1976, ch. 370, § 72; L. 1983, ch. 289, § 6; L. 1986, ch. 192, § 1; L. 1987, ch. 37, § 6; L. 1988, ch. 16, § 29; L. 1989, ch. 13, § 23; L. 1991, ch. 145, § 3; L. 1998, ch. 124, § 4; July 1; L. 2004, Ch. 179 § 68; L. 2005 ch. 138 § 3; July 1.

44-717. Collection of employer payments; penalties and interest, past-due reports and payments; priorities; liens, enforcement; seizure and sale of property; procedure; refunds; cash deposit or bond; liability of officers and stockholders and members and managers of limited liability companies. (a)(1) Penalties on past-due reports, interest on past-due contributions, payments in lieu of contributions, benefit cost payments and interest assessments made under K.S.A. 44-710a, and amendments thereto. Any employer or any officer or agent of an employer, who fails to file any wage report or contribution return by the last day of the month following the close of each calendar quarter to which they are related shall pay a penalty as provided by this subsection for each month or fraction of a month until the report or return is received by the secretary of labor except that for calendar years 2010 and 2011 an employer or any officer or agent of the employer shall have up to 90 days past the due date for any of the first three calendar quarters in a calendar year to pay such employer's contribution without being charged

any interest, however, when the 90 day period has passed, the provisions of the section shall apply. The penalty for each month or fraction of a month shall be an amount equal to .05% of the total wages paid by the employer during the quarter, except that no penalty shall be less than \$25 nor more than \$200 for each such report or return not timely filed. Contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, unpaid by the last day of the month following the last calendar quarter to which they are related and payments in lieu of contributions unpaid 30 days after the mailing of the statement of benefit charges, shall bear interest at the rate of 1% per month or fraction of a month until payment is received by the secretary of labor except that an employing unit, which is not theretofore subject to this law and which becomes an employer and does not refuse to make the reports, returns and contributions, payments in lieu of contributions and benefit cost payments required under this law, shall not be liable for such penalty or interest if the wage reports and contribution returns required are filed and the contributions, payments in lieu of contributions or benefit cost payments required are paid within 10 days following notification by the secretary of labor that a determination has been made fixing its status as an employer subject to this law. Upon written request and good cause shown, the secretary of labor may abate any penalty or interest or portion thereof provided for by this subsection (a). Interest amounting to less than \$5 shall be waived by the secretary of labor and shall not be collected. Penalties and interest collected pursuant to this subsection shall be paid into the special employment security fund. For all purposes under this section, amounts assessed as surcharges under subsection (j) or under K.S.A. 44-710a, and amendments thereto, shall be considered to be contributions and shall be subject to penalties and interest imposed under this section and to collection in the manner provided by this section. For purposes under this section, amounts assessed under K.S.A. 44-710a, and amendments thereto, shall be subject to penalties and interest imposed under this section and to collection in the manner provided in the section. For purposes of this subsection, a wage report, a contribution return, a contribution, a payment in lieu of contribution, a benefit cost payment or an interest assessment made pursuant to K.S.A. 44-710a, and amendments thereto, is deemed to be filed or paid as of the date it is placed in the United States mail.

(2) Notices of payment and reporting delinquency

to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

- (i) will cause the Indian tribe to be liable for taxes under FUTA;
- (ii) will cause the Indian tribe to lose the option to make payments in lieu of contributions;
- (iii) could cause the Indian tribe to be excepted from the definition of "employer," as provided in paragraph (h)(3) of K.S.A. 44-703, and amendments thereto, and services in the employ of the Indian tribe, as provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments thereto, to be excepted from "employment."

(b) *Collection.* (1) If, after due notice, any employer defaults in payment of any penalty, contributions, payments in lieu of contributions, benefit cost payments, interest assessments made pursuant to K.S.A. 44-710a, and amendment thereto, or interest thereon the amount due may be collected by civil action in the name of the secretary of labor and the employer adjudged in default shall pay the cost of such action. Civil actions brought under this section to collect contributions, payments in lieu of contributions, benefit cost payments, interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, penalties, or interest thereon from an employer shall be heard by the district court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation act. All liability determinations of contributions due, payments in lieu of contributions or benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, due shall be made within a period of five years from the date such contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, were due except such determinations may be made for any time when an employer has filed fraudulent reports with intent to evade liability.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action under this

subsection. In instituting such an action against any such employing unit the secretary of labor shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit and shall be of the same force and validity as if served upon it personally within this state. The secretary of labor shall send notice immediately of the service of such process or notice, together with a copy thereof, by registered or certified mail, return receipt requested, to such employing unit at its last-known address and such return receipt, the affidavit of compliance of the secretary of labor with the provisions of this section, and a copy of the notice of service, shall be appended to the original of the process filed in the court in which such civil action is pending.

(3) The district courts of this state shall entertain, in the manner provided in subsections (b)(1), and (b) (2), actions to collect contributions, payments in lieu of contributions, interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, and other amounts owed including interest thereon for which liability has accrued under the employment security law of any other state or of the federal government.

(c) *Priorities under legal dissolutions or distributions.* In the event of any distribution of employer's assets pursuant to an order of any court under the laws of this state, including but not limited to any probate proceeding, interpleader, receivership, assignment for benefit of creditors, adjudicated insolvency, composition or similar proceedings, contributions or payments in lieu of contributions then or thereafter due shall be paid in full from the moneys which shall first come into the estate, prior to all other claims, except claims for wages of not more than \$250 to each claimant, earned within six months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in that act for taxes due any state of the United States.

(d) *Assessments.* If any employer fails to file a report or return required by the secretary of labor for the determination of contributions, or payments in lieu of contributions, or benefit cost payments, the secretary of labor may make such reports or returns or cause the same to be made, on the basis of such information as the secretary may be able to obtain and shall collect the contributions, payments in lieu of contributions

or benefit cost payments as determined together with any interest due under this act. The secretary of labor shall immediately forward to the employer a copy of the assessment by registered or certified mail to the employer's address as it appears on the records of the agency, and such assessment shall be final unless the employer protests such assessment and files a corrected report or return for the period covered by the assessment within 15 days after the mailing of the copy of assessment. Failure to receive such notice shall not invalidate the assessment. Notice in writing shall be presumed to have been given when deposited as certified or registered matter in the United States mail, addressed to the person to be charged with notice at such person's address as it appears on the records of the agency.

(e)(1) *Lien.* If any employer or person who is liable to pay contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, neglects or refuses to pay the same after demand, the amount, including interest and penalty, shall be a lien in favor of the state of Kansas, secretary of labor, upon all property and rights to property, whether real or personal, belonging to such employer or person. Such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been filed by the secretary of labor in the office of register of deeds in any county in the state of Kansas, in which such property is located, and when so filed shall be notice to all persons claiming an interest in the property of the employer or person against whom filed. The register of deeds shall enter such notices in the financing statement record and shall also record the same in full in miscellaneous record and index the same against the name of the delinquent employer. The register of deeds shall accept, file, and record such notice without prepayment of any fee, but lawful fees shall be added to the amount of such lien and collected when satisfaction is presented for entry. Such lien shall be satisfied of record upon the presentation of a certificate of discharge by the state of Kansas, secretary of labor. Nothing contained in this subsection (e) shall be construed as an invalidation of any lien or notice filed in the name of the unemployment compensation division or the employment security division and such liens shall be and remain in full force and effect until satisfied as provided by this subsection.

(2) *Authority of secretary or authorized*

representative. If any employer or person who is liable to pay any contributions, payments in lieu of contributions, benefit cost payments and interest assessment made pursuant to K.S.A. 44-710a, and amendments thereto, including interest and penalty, neglects or refuses to pay the same within 10 days after notice and demand therefor, the secretary or the secretary's authorized representative may collect such contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, including interest and penalty, and such further amount as is sufficient to cover the expenses of the levy, by levy upon all property and rights to property which belong to the employer or person or which have a lien created thereon by this subsection for the payment of such contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, including interest and penalty. As used in this subsection (e), "property" includes all real property and personal property, whether tangible or intangible, except such property which is exempt under K.S.A. 60-2301 et seq., and amendments thereto. Levy may be made upon the accrued salary or wages of any officer, employee or elected official of any state or local governmental entity which is subject to K.S.A. 60-723 and amendments thereto, by serving a notice of levy as provided in subsection (d) of K.S.A. 60-304 and amendments thereto. If the secretary or the secretary's authorized representative makes a finding that the collection of the amount of such contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, including interest and penalty, is in jeopardy, notice and demand for immediate payment of such amount may be made by the secretary or the secretary's authorized representative and, upon failure or refusal to pay such amount, immediate collection of such amount by levy shall be lawful without regard to the ten-day period provided in this subsection.

(3) *Seizure and sale of property.* The authority to levy granted under this subsection (e) includes the power of seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the secretary or the secretary's authorized representative may levy upon property or rights to property, the secretary or the secretary's authorized representative may seize and sell such property or rights to property.

(4) *Successive seizures.* Whenever any property or right to property upon which levy has been made under this subsection (e) is not sufficient to satisfy the claim of the secretary for which levy is made, the secretary or the secretary's authorized representative may proceed thereafter and as often as may be necessary, to levy in like manner upon any other property or rights to property which belongs to the employer or person against whom such claim exists or upon which a lien is created by this subsection (e) until the amount due from the employer or person, together with all expenses, is fully paid.

(f) *Warrant.* In addition or as an alternative to any other remedy provided by this section and provided that no appeal or other proceeding for review permitted by this law shall then be pending and the time for taking thereof shall have expired, the secretary of labor or an authorized representative of the secretary may issue a warrant certifying the amount of contributions, payments in lieu of contributions, benefit cost payments, interest or penalty, and the name of the employer liable for same after giving 15 days prior notice. Upon request, service of final notices shall be made by the sheriff within the sheriff's county, by the sheriff's deputy or some person specially appointed by the secretary for that purpose, or by the secretary's designee. A person specially appointed by the secretary or the secretary's designee to serve final notices may make service any place in the state. Final notices shall be served as follows:

(1) *Individual.* Service upon an individual, other than a minor or incapacitated person, shall be made by delivering a copy of the final notice to the individual personally or by leaving a copy at such individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, by leaving a copy at the business establishment of the employer with an officer or employee of the establishment, or by delivering a copy to an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by a statute to receive service, such further notice as the statute requires shall be given. If service as prescribed above cannot be made with due diligence, the secretary or the secretary's designee may order service to be made by leaving a copy of the final notice at the employer's dwelling house, usual place of abode or business establishment.

(2) *Corporations and partnerships.* Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when by law it

may be sued as such, shall be made by delivering a copy of the final notice to an officer, partner or resident managing or general agent thereof by leaving a copy at any business office of the employer with the person having charge thereof or by delivering a copy to any other agent authorized by appointment or required by law to receive service of process, if the agent is one authorized by law to receive service and, if the law so requires, by also mailing a copy to the employer.

(3) *Refusal to accept service.* In all cases when the person to be served, or an agent authorized by such person to accept service of petitions and summonses, shall refuse to receive copies of the final notice, the offer of the duly authorized process server to deliver copies thereof and such refusal shall be sufficient service of such notice.

(4) *Proof of service.* (A) Every officer to whom a final notice or other process shall be delivered for service within or without the state, shall make return thereof in writing stating the time, place and manner of service of such writ, and shall sign such officer's name to such return.

(B) If service of the notice is made by a person appointed by the secretary or the secretary's designee to make service, such person shall make an affidavit as to the time, place and manner of service thereof in a form prescribed by the secretary or the secretary's designee.

(5) *Time for return.* The officer or other person receiving a final notice shall make a return of service promptly and shall send such return to the secretary or the secretary's designee in any event within 10 days after the service is effected. If the final notice cannot be served it shall be returned to the secretary or the secretary's designee within 30 days after the date of issue with a statement of the reason for the failure to serve the same. The original return shall be attached to and filed with any warrant thereafter filed.

(6) *Service by mail.* (A) Upon direction of the secretary or the secretary's designee, service by mail may be effected by forwarding a copy of the notice to the employer by registered or certified mail to the employer's address as it appears on the records of the agency. A copy of the return receipt shall be attached to and filed with any warrant thereafter filed.

(B) The secretary of labor or an authorized representative of the secretary may file the warrant for record in the office of the clerk of the district court in the county in which the employer owing such contributions, payments in lieu of contributions, benefit cost payments, interest assessments made

pursuant to K.S.A. 44-710a, and amendments thereto, interest, or penalty has business property. The warrant shall certify the amount of contributions, payments in lieu of contributions, benefit cost payments, interest and penalty due, and the name of the employer liable for such amount. It shall be the duty of the clerk of the district court to file such warrant of record and enter the warrant in the records of the district court for judgment and decrees under the procedure prescribed for filing transcripts of judgment.

(C) The clerk shall enter, on the day the warrant is filed, the case on the appearance docket, together with the amount and the time of filing the warrant. From the time of filing such warrant, the amount of the contributions, payments in lieu of contributions, benefit cost payments, interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, interest, and penalty, certified therein, shall have the force and effect of a judgment of the district court until the same is satisfied by the secretary of labor or an authorized representative or attorney for the secretary. Execution shall be issuable at the request of the secretary of labor, an authorized representative or attorney for the secretary, as is provided in the case of other judgments.

(D) Postjudgment procedures shall be the same as for judgments according to the code of civil procedure.

(E) Warrants shall be satisfied of record by payment to the clerk of the district court of the contributions, payments in lieu of contributions, benefit cost payments, interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, penalty, interest to date, and court costs. Warrants may also be satisfied of record by payment to the clerk of the district court of all court costs accrued in the case and by filing a certificate by the secretary of labor, certifying that the contributions, payments in lieu of contributions, benefit cost payments, interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, interest and penalty have been paid.

(g) *Remedies cumulative.* The foregoing remedies shall be cumulative and no action taken shall be construed as an election on the part of the state or any of its officers to pursue any remedy or action under this section to the exclusion of any other remedy or action for which provision is made.

(h) *Refunds.* If any individual, governmental entity or organization makes application for refund or adjustment of any amount paid as contributions, benefit cost payments, interest assessments made

pursuant to K.S.A. 44-710a, and amendments thereto, or interest under this law and the secretary of labor determines that such amount or any portion thereof was erroneously collected, except for amounts less than \$5, the secretary of labor shall allow such individual or organization to make an adjustment thereof, in connection with subsequent contribution payments, or if such adjustment cannot be made the secretary of labor shall refund the amount, except for amounts less than \$5, from the employment security fund, except that all interest erroneously collected which has been paid into the special employment security fund shall be refunded out of the special employment security fund. No adjustment or refund shall be allowed with respect to a payment as contributions, interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, or interest unless an application therefor is made on or before whichever of the following dates is later: (1) One year from the date on which such payment was made; or (2) three years from the last day of the period with respect to which such payment was made. For like cause and within the same period adjustment or refund may be so made on the secretary's own initiative. The secretary of labor shall not be required to refund any contributions, payments in lieu of contributions or benefit cost payments based upon wages paid which have been used as base-period wages in a determination of a claimant's benefit rights when justifiable and correct payments have been made to the claimant as the result of such determination. For all taxable years commencing after December 31, 1997, interest at the rate prescribed in K.S.A. 79-2968 and amendments thereto shall be allowed on a contribution or benefit cost payment which the secretary has determined was erroneously collected pursuant to this section.

(i) (1) *Cash deposit or bond.* If any contributing employer is delinquent in making payments under the employment security law during any two quarters of the most recent four-quarter period, the secretary or the secretary's authorized representative shall have the discretionary power to require such contributing employer either to deposit cash or to file a bond with sufficient sureties to guarantee the payment of contributions, interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, penalty and interest owed by such employer.

(2) The amount of such cash deposit or bond shall be not less than the largest total amount of contributions, interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, penalty and interest

reported by the employer in two of the four calendar quarters preceding any delinquency. Such cash deposit or bond shall be required until the employer has shown timely filing of reports and payment of contributions and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, for four consecutive calendar quarters.

(3) Failure to file such cash deposit or bond shall subject the employer to a surcharge of 2.0% which shall be in addition to the rate of contributions assigned to the employer under K.S.A. 44-710a and amendments thereto. Contributions paid as a result of this surcharge shall not be credited to the employer's experience rating account. This surcharge shall be effective during the next full calendar year after its imposition and during each full calendar year thereafter until the employer has filed the required cash deposit or bond or has shown timely filing of reports and payment of contributions for four consecutive calendar quarters.

(j) Any officer, major stockholder or other person who has charge of the affairs of an employer, which is an employing unit described in section 501(c)(3) of the federal internal revenue code of 1954 or which is any other corporate organization or association, or any member or manager of a limited liability company, or any public official, who willfully fails to pay the amount of contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, required to be paid under the employment security law on the date on which such amount becomes delinquent, shall be personally liable for the total amount of the contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, and any penalties and interest due and unpaid by such employing unit. The secretary or the secretary's authorized representative may assess such person for the total amount of contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, and any penalties, and interest computed as due and owing. With respect to such persons and such amounts assessed, the secretary shall have available all of the collection remedies authorized or provided by this section.

(k) *Electronic filing of wage report and contribution return and electronic payment of contributions, benefit cost payments, reimbursing payments or interest assessments made pursuant to K.S.A. 44-710a, and*

amendments thereto. The following employers or third party administrators shall file all wage reports and contributions returns and make payment of contributions, benefit cost payments or reimbursing payments electronically as follows:

(1) Wage reports, contribution returns and payments due after June 30, 2008, for those employers with 250 or more employees or third party administrators with 250 or more client employees at the time such filing or payment is first due;

(2) wage reports, contribution returns and payments due after June 30, 2009, for those employers with 100 or more employees or third party administrators with 100 or more client employees at the time such filing or payment is first due; and

(3) wage reports, contribution returns, payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, due after June 30, 2010, for those third party administrators with 50 or more client employees at the time such filing or payment is first due.

The requirements of this subsection may be waived by the secretary for an employer if the employer demonstrated a hardship in complying with this subsection.

History: L. 1937, ch. 255, § 17; L. 1938, ch. 51, § 4; L. 1939, ch. 214, § 8; L. 1941, ch. 264, § 14; L. 1945, ch. 220, § 12; L. 1947, ch. 291, § 11; L. 1949, ch. 288, § 13; L. 1959, ch. 223, § 7; L. 1961, ch. 247, § 1; L. 1971, ch. 180, § 8; L. 1973, ch. 205, § 11; L. 1976, ch. 370, § 73; L. 1976, ch. 227, § 1; L. 1979, ch. 159, § 7; L. 1981, ch. 205, § 3; L. 1983, ch. 169, § 8; L. 1984, ch. 147, § 11; L. 1986, ch. 191, § 5; L. 1992, ch. 74, § 4; L. 1995, ch. 71, § 2; L. 1997, ch. 182, § 81; L. 1998, ch. 124, § 5; L. 2001, ch. 139, §; July 1; L. 2004, Ch. 179 § 69; L. 2007, ch. 163, § 9; L. 2008, ch. 105, § 3; eff. July 1, 2008; L. 2010, ch. 14, § 2; L. 2011, ch. 85 § 7.

44-718. Protection of rights and benefits; penalties; recoupment of food stamp overissuances. (a)

Waiver of rights void. No agreement by an individual to waive, release or commute such individual's rights to benefits or any other rights under this act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contribution or payments in lieu of contributions required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from remuneration to finance the employer's contributions required from such employer, or require or accept any waiver of any right hereunder by any

individual in such employer's employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than \$100 nor more than \$1,000 or be imprisoned for not more than six months, or both.

(b) *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the secretary of labor or representatives of the secretary or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the secretary of labor or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the secretary of labor. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than \$50 nor more than \$500, or imprisoned for not more than six months, or both.

(c) *No assignment of benefits; exemptions.* No assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this act shall be valid; and such rights to benefits shall be exempt from levy, except in accordance with section 6331 of the federal internal revenue code of 1986, and shall be exempt from, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by an individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or such individual's spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

(d) *Support exception.* (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes support obligations as defined under paragraph (7). If any such individual discloses that such individual owes support obligations, and is determined to be eligible for unemployment compensation, the secretary shall notify the state or local support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

(2) The secretary shall deduct and withhold from any unemployment compensation payable to an individual that owes support obligations as defined under paragraph (7):

(A) The amount specified by the individual to the secretary to be deducted and withheld under this subsection, if neither (B) nor (C) is applicable; or

(B) the amount, if any, determined pursuant to an agreement submitted to the secretary under section 454(20)(B)(i) of the social security act by the state or local support enforcement agency, unless subparagraph (C) is applicable; or

(C) any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process (as that term is defined in section 459(i)(5) of the social security act) properly served upon the secretary.

(3) Any amount deducted and withheld under paragraph (2) shall be paid by the secretary to the appropriate state or local support enforcement agency.

(4) Any amount deducted and withheld under paragraph (2) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local support enforcement agency in satisfaction of the individual's support obligations.

(5) For purposes of paragraphs (1) through (4), "unemployment compensation" means any compensation payable under the employment security law after application of the recoupment provisions of subsection (d) of K.S.A. 44-719 and amendments thereto, (including amounts payable by the secretary pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment).

(6) This subsection applies only if appropriate arrangements have been made for reimbursement by the state or local support enforcement agency for the administrative costs incurred by the secretary under this section which are attributable to support obligations being enforced by the state or local support enforcement agency.

(7) For the purposes of this subsection, "support obligations" means only those obligations which are being enforced pursuant to a plan described in section 454 of the federal social security act which has been approved by the secretary of health and human services under part D of title IV of the federal social security act.

(8) For the purposes of this subsection, "state or local support enforcement agency" means any agency of this state or a political subdivision thereof operating pursuant to a plan described in paragraph (7).

(e)(1) An individual filing a new claim for

unemployment compensation shall, at the time of filing such claim, be advised that:

(A) Unemployment compensation is subject to federal, state and local income tax;

(B) requirements exist pertaining to estimated tax payments;

(C) the individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the federal internal revenue code; and

(D) the individual may elect to have state income tax deducted and withheld at the rate of 3.5% from the individual's payment of unemployment compensation; and

(E) the individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal or state taxing authority as a payment of income tax.

(3) The secretary shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, food stamp over issuances or any other amounts required to be deducted and withheld under this act.

(f) (1) An individual filing a new claim for unemployment compensation at the time of filing such claim, shall disclose whether or not such individual owes an uncollected over issuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons. The secretary shall notify the state food stamp agency enforcing such obligation of any individual who discloses that such individual owes an uncollected over issuance of food stamps and who is determined to be eligible for unemployment compensation.

(2) The secretary shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected over issuance:

(A) The amount specified by the individual to the secretary to be deducted and withheld under this clause;

(B) the amount (if any) determined pursuant to an agreement submitted to the state food stamp agency under section 13(c)(3)(A) of the Food Stamp

Act of 1977; or

(C) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to section 13(c)(3)(B) of such act.

(3) Any amount deducted and withheld under this section shall be paid by the secretary to the appropriate state food stamp agency.

(4) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state food stamp agency as repayment of the individual's uncollected over issuance.

(5) For purposes of this section, the term "unemployment compensation" means any compensation payable under this act including amounts payable by the secretary pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(6) This section applies only if arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the secretary under this section which are attributable to the repayment of uncollected overissuances to the state food stamp agency.

History: L. 1937, ch. 255, § 18; L. 1973, ch. 205, § 12; L. 1976, ch. 370, § 74; L. 1982, ch. 214, § 5; L. 1985, ch. 115, § 47; L. 1996, ch. 232, § 5; L. 1997, ch. 19, § 3; L. 1998, ch. 124, § 6; July 1; L. 2004, Ch. 179 § 70; L. 2011, ch 85 § 9.

44-719. Penalties for violation of act; repayment of benefits ineligible to receive, interest thereon.

(a) Any person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, either for such person or for any other person, shall be guilty of theft and shall be punished in accordance with the provisions of section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(b) Any employing unit or any officer or agent for any employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this act, or who willfully fails or refuses to make any such contributions or other

payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than 60 days, or both such fine and imprisonment. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who willfully violates any provision of this act or any rule and regulation adopted by the secretary hereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein or provided by any other applicable statute, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than 60 days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d)(1) Any person who has received any amount of money as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in such person's case, or while such person was disqualified from receiving benefits, shall in the discretion of the secretary, either be liable to have such amount of money deducted from any future benefits payable to such person under this act or shall be liable to repay to the secretary for the employment security fund an amount of money equal to the amount so received by such person. After a period of five years, the secretary may waive the collection of any such amount of money when the secretary has determined that the payment of such amount of money was not due to fraud, misrepresentation, or willful nondisclosure on the part of the person receiving such amount of money, and the collection thereof would be against equity or would cause extreme hardship with regard to such person. The collection of benefit overpayments which were made in the absence of fraud, misrepresentation or willful nondisclosure of required information on the part of the person who received such overpayments, may be waived by the secretary at any time if such person met all eligibility requirements of the employment security law during the weeks in which the overpayments were made.

(2) Any benefit erroneously paid which is not repaid shall bear interest at the rate of 1.5% per month or fraction of a month. If the benefit was received as a result of fraud, misrepresentation or willful nondisclosure of required information, interest shall

accrue from the date of the final determination of overpayment until repayment plus interest is received by the secretary. If the overpayment was without fraud, misrepresentation or willful nondisclosure of required information, interest shall accrue upon any balance which remains unpaid two years after the final determination of overpayment is made and shall continue until payment plus accrued interest is received by the secretary. Interest collected pursuant to this section shall be paid into the special employment security fund, except that interest collected on federal administrative programs shall be returned to the federal government. Upon written request and for good cause shown, the secretary may abate any interest or portion thereof provided for by this subsection (d)(2). Interest accrued may not be paid by money deducted from any future benefits payable to such persons liable for any overpayment.

(3) Unless collection is waived by the secretary, any such amount shall be collectible in the manner provided in subsection (b) of K.S.A. 44-717 and amendments thereto for the collection of past due contributions. The courts of this state shall in like manner entertain actions to collect amounts of money erroneously paid as benefits, or unlawfully obtained, for which liability has accrued under the employment security law of any other state or of the federal government.

(e) Any employer or person who willfully fails or refuses to pay contributions, payments in lieu of contributions or benefit cost payments or attempts in any manner to evade or defeat any such contributions, payments in lieu of contributions or benefit cost payments or the payment thereof, shall be liable for the payment of such contributions, payments in lieu of contributions or benefit cost payments and, in addition to any other penalties provided by law, shall be liable to pay a penalty equal to the total amount of the contributions, payments in lieu of contributions or benefit cost payments evaded or not paid.

(f)(1) It shall be unlawful for an employing unit to knowingly obtain or attempt to obtain a reduced liability for contributions under subsection (b)(1) of K.S.A. 44-710a and amendments thereto through manipulation of the employer's workforce, or for an employing unit that is not an employing unit at the time it acquires the trade or business, to knowingly obtain or attempt to obtain a reduced liability for contributions under subsection (b)(5) of K.S.A. 44-710a and amendments thereto, or any other provision of K.S.A. 44-710a and amendments thereto related to determining the assignment of a contribution rate,

when the sole or primary purpose of the business acquisition was for the purpose of obtaining a lower rate of contributions, or for a person to knowingly advise an employing unit in such a way that results in such a violation, such employing unit or person shall be subject to the following penalties.

(A) If the person is an employer, then such employer shall be assigned the highest rate assignable under K.S.A. 44-710a, and amendments thereto, for the rate year during which such violation or attempted violation occurred and the three rate years immediately following this rate year. However, if the employer's business is already at such highest rate for any year, or if the amount of increase in the employer's rate would be less than 2% for such year, then a penalty rate of contributions of 2% of taxable wages shall be imposed for such year. Any moneys resulting from the difference of the computed rate and the penalty rate shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215 and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of special employment security fund.

(B) If the person is not an employer, such person shall be subject to a civil money penalty of not more than \$5,000. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215 and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the special employment security fund.

(2) For purposes of this subsection, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(3) For purposes of this subsection, the term "violates or attempts to violate" includes, but is not limited to, any intent to evade, misrepresentation or willful nondisclosure.

(4)(A) In addition to, or in lieu of, any civil penalty imposed by paragraph(1) if, the director of employment security or a special assistant attorney general assigned to the department of labor, has probable cause to believe that a violation of this subsection (f) should be prosecuted as a crime, a copy of any order, all investigative reports and any evidence in the possession of the division of employment security which relates to such violation, may be forwarded to the prosecuting attorney in the county in which the act or any of the acts were performed which constitute a violation of this subsection (f). Any

case which a county or district attorney fails to prosecute within 90 days shall be returned promptly to the director of employment security. The special assistant attorney general assigned to the Kansas department of labor shall then prosecute the case, if, in the opinion of the special assistant attorney general, the acts or practices involved still warrant prosecution.

(B) Violation of this subsection (f) shall be a level 9, nonperson felony.

(5) The secretary shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(6) For purposes of subsection (f):

(A) "Person" has the meaning given such term by section 7701(a)(1) of the internal revenue code of 1986;

(B) "trade or business" shall include the employer's workforce; and

(C) the provisions of sections 31 and 32 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply.

(7) This subsection (f) shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulation issued by the United States department of labor.

History: L. 1937, ch. 255, § 19; L. 1941, ch. 264, § 15; L. 1951, ch. 307, § 7; L. 1973, ch. 206, § 1; L. 1976, ch. 226, § 5; L. 1976, ch. 370, § 75; L. 1986, ch. 191, § 6; L. 1991, ch. 145, § 4; July 1; L. 2005 ch. 138 § 4; L. 2011, ch. 30 § 188.

44-720. Representation in court; prosecutions.

(a) *In civil actions.* In any civil action involving the provisions of this act, the secretary of labor and the state may be represented by any qualified attorney who is an employee of the secretary of labor and designated by said secretary for this purpose, and at the secretary's request by the attorney general; or if the action is brought in the courts of any other state by any attorney qualified to appear in the courts of that state.

(b) *In criminal actions.* All criminal actions for violation of any provision of this act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his or her request and under his or her direction, by the district attorney or county attorney of any county in which the offense was committed.

History: L. 1937, ch. 255, § 20; L. 1941, ch. 264, § 16; L. 1970, ch. 191, § 8; L. 1976, ch. 370, § 76; July 1; L. 2004, Ch. 179 § 71; July 1.

44-721. Nonliability of state. Benefits shall be deemed

to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the employment security fund and neither the state nor the secretary of labor shall be liable for any amount in excess of such sums.

History: L. 1937, ch. 255, § 21; L. 1949, ch. 288, § 14; L. 1976, ch. 370, § 77; July 1; L. 2004, Ch. 179 § 72; July 1.

44-722. Saving clause. The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this act at any time.

History: L. 1937, ch. 255, § 22; March 29.

44-723. Operation concurrent with federal act. If the tax imposed by title IX of the federal social security act (Public No. 271, seventy-fourth congress, approved August 14, 1935) [*], or by any amendments thereto, or any other federal tax against which contributions under this act may be credited has been repealed by congress or has been held unconstitutional by the United States supreme court, the payment of contributions and benefits under this act shall cease, and any unobligated funds in the state employment security fund and in the United States unemployment trust fund returned by the treasurer of the United States because title IX [*] of the social security act is inoperative, shall be refunded to contributors in proportion to their contributions.

History: L. 1937, ch. 255, § 23; L. 1949, ch. 288, § 15; March 5.

44-724. Separability of provisions. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby. No caption of any section or set of sections shall in any way affect the interpretation of this act or any part thereof.

History: L. 1937, ch. 255, § 24; March 29.

44-725. Contributions and payments in lieu of contributions deductible in computation of Kansas taxable income. Contributions and payments in lieu of contributions paid by the employer shall be deductible in arriving at the taxable income of such employer under the income tax laws of the state of Kansas, to the same extent as taxes are deductible during any taxable year by any such employer.

History: L. 1937, ch. 255, § 25; L. 1973, ch. 205, § 13; July 1.

44-726.

History: L. 1941, ch. 264, § 17; Repealed, L. 1949, ch. 288, § 16; March 5.

44-727. Title to real property acquired with federal funds. The state of Kansas is hereby authorized to receive and accept title to real property which may be acquired under rental purchase agreements executed or to be executed by the secretary in the administration of the employment security law. Such property shall be acquired without appropriation by the state of Kansas and the cost thereof shall be defrayed by federal funds made available for the administration of said law. Sufficiency of title to any property acquired hereunder shall be approved by the attorney general prior to conveyance by general warranty deed to the state of Kansas. Any property acquired under authority hereof shall be utilized primarily for the administration of the employment security law by the secretary of labor. After acquisition said property may be occupied for administration of the employment security law at no cost other than maintenance.

History: L. 1951, ch. 307, § 8; L. 1976, ch. 370, § 78; July 1; L. 2004, Ch. 179 § 73; July 1.

44-728 to 44-730.

History: L. 1959, ch. 225, §§ 2 to 4; Repealed, L. 1978, ch. 194, § 1; July 1.

44-731.

History: L. 1959, ch. 225, § 9; Repealed, L. 1978, ch. 194, § 1; July 1.

44-732 to 44-734.

History: L. 1961, ch. 249, §§ 2 to 4; Repealed, L. 1978, ch. 194, § 1; July 1.

44-735.

History: L. 1961, ch. 249, § 11; Repealed, L. 1978, ch. 194, § 1; July 1.

44-736, 44-737.

History: L. 1963, ch. 271, §§ 2, 3; Repealed, L. 1978, ch. 194, § 1; July 1.

44-738.

History: L. 1963, ch. 271, § 6; Repealed, L. 1978, ch. 194, § 1; July 1.

44-739 to 44-742.

History: L. 1965, ch. 325, §§ 2 to 4, 11; Repealed, L. 1978, ch. 194, § 1; July 1.

44-743 to 44-745.

History: L. 1966, ch. 5, §§ 2 to 4 (Budget Session); Repealed, L. 1978, ch. 194, § 1; July 1.

44-746 to 44-748.

History: L. 1969, ch. 248, §§ 2 to 4; Repealed, L. 1978, ch. 194, § 1; July 1.

44-749.

History: L. 1969, ch. 248, § 5; L. 1975, ch. 262, § 1; Repealed, L. 1978, ch. 194, § 1; July 1.

44-750, 44-751.

History: L. 1969, ch. 248, §§ 6, 7; Repealed, L. 1978, ch. 194, § 1; July 1.

44-752. Sections 44-704a and 44-713a part of and supplemental to employment security law. K.S.A. 44-704a and 44-713a shall be supplemental to and a part of the employment security law.

History: L. 1971, ch. 180, § 11; Feb. 25.

44-753 to 44-756.

History: L. 1974, ch. 201, §§ 1 to 4; Repealed, L. 1978, ch. 194, § 1; July 1.

44-757. Shared work compensation program; definitions; rules and regulations; procedures; employer plans, review and approval; benefits, eligibility and amount; extended benefit eligibility; limit on period for which program benefits payable.

Shared work unemployment compensation program. (a) As used in this section:

(1) "Affected unit" means a specified department, shift or other unit of two or more employees that is designated by an employer to participate in a shared work plan.

(2) "Fringe benefit" means health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer.

(3) "Fund" has the meaning ascribed thereto by subsection (k) of K.S.A. 44-703 and amendments thereto.

(4) "Normal weekly hours of work" means the lesser of 40 hours or the average obtained by dividing the total

number of hours worked per week during the preceding twelve-week period by the number 12.

(5) "Participating employee" means an employee who works a reduced number of hours under a shared work plan.

(6) "Participating employer" means an employer who has a shared work plan in effect.

(7) "Secretary" means the secretary of labor or the secretary's designee.

(8) "Shared work benefit" means an unemployment compensation benefit that is payable to an individual in an affected unit because the individual works reduced hours under an approved shared work plan.

(9) "Shared work plan" means a program for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work.

(10) "Shared work unemployment compensation program" means a program designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages.

(b) The secretary shall establish a voluntary shared work unemployment compensation program as provided by this section. The secretary may adopt rules and regulations and establish procedures necessary to administer the shared work unemployment compensation program.

(c) An employer who wishes to participate in the shared work unemployment compensation program must submit a written shared work plan to the secretary for the secretary's approval. As a condition for approval, a participating employer must agree to furnish the secretary with reports relating to the operation of the shared work plan as requested by the secretary. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the secretary and shall report the findings to the secretary.

(d) The secretary may approve a shared work plan if:

(1) The shared work plan applies to and identifies a specific affected unit;

(2) the employees in the affected unit are identified by name and social security number;

(3) the shared work plan reduces the normal weekly hours of work for an employee in the affected unit by not less than 20% and not more than 40%;

(4) the shared work plan applies to at least 10% of the employees in the affected unit;

(5) the shared work plan describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit;

(6) the employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of temporary layoffs that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours;

(7) the employer has filed all reports required to be filed under the employment security law for all past and current periods and has paid all contributions, benefit cost payments, or if a reimbursing employer has made all payments in lieu of contributions due for all past and current periods; and

(8) (A) a contributing employer must be eligible for a rate computation under subsection (a)(2) of K.S.A. 44-710a and amendments thereto and is not a negative account employer as defined by subsection (d) of K.S.A. 44-710a and amendments thereto; (B) a rated governmental employer must be eligible for a rate computation under subsection (g) of K.S.A. 44-710d and amendments thereto.

(e) If any of the employees who participate in a shared work plan under this section are covered by a collective bargaining agreement, the shared work plan must be approved in writing by the collective bargaining agent.

(f) A shared work plan may not be implemented to subsidize seasonal employers during the off-season or to subsidize employers who have traditionally used part-time employees.

(g) The secretary shall approve or deny a shared work plan no later than the 30th day after the day the shared work plan is received by the secretary. The secretary shall approve or deny a shared work plan in writing. If the secretary denies a shared work plan, the secretary shall notify the employer of the reasons for the denial.

(h) A shared work plan is effective on the date it is approved by the secretary, except for good cause a shared work plan may be effective at any time within a period of 14 days prior to the date such plan is approved by the secretary. The shared work plan expires on the last day of the 12th full calendar month after the effective date of the shared work plan.

(i) An employer may modify a shared work plan created under this section to meet changed conditions if the modification conforms to the basic provisions of the shared work plan as approved by the secretary. The employer must report the changes made to the shared work plan in writing to the secretary before implementing the changes. If the original shared work plan is substantially modified, the secretary shall

reevaluate the shared work plan and may approve the modified shared work plan if it meets the requirements for approval under subsection (d). The approval of a modified shared work plan does not affect the expiration date originally set for that shared work plan. If substantial modifications cause the shared work plan to fail to meet the requirements for approval, the secretary shall deny approval to the modifications as provided by subsection (g).

(j) Notwithstanding any other provisions of the employment security law, an individual is unemployed and is eligible for shared work benefits in any week in which the individual, as an employee in an affected unit, works for less than the individual's normal weekly hours of work in accordance with an approved shared work plan in effect for that week. The secretary may not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of the employment security law that relates to availability for work, active search for work or refusal to apply for or accept work with an employer other than the participating employer.

(k) An individual is eligible to receive shared work benefits with respect to any week in which the secretary finds that:

(1) The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;

(2) the individual is able to work and is available for additional hours of work or full-time work with the participating employer;

(3) the individual's normal weekly hours of work have been reduced by at least 20% but not more than 40%, with a corresponding reduction in wages; and

(4) the individual's normal weekly hours of work and wages have been reduced as described in paragraph (3) of this subsection (k) for a waiting period of one week which occurs within the period the shared work plan is in effect, which period includes the week for which the individual is claiming shared work benefits.

(l) The secretary shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's hours as set forth in the employer's shared work plan. If the shared benefit amount is not a multiple of \$1, the secretary shall reduce the amount to the next lowest multiple of \$1. All shared work benefits under this section shall be

payable from the fund.

(m) The secretary may not pay an individual shared work benefits for any week in which the individual performs paid work for the participating employer in excess of the reduced hours established under the shared work plan.

(n) An individual may not receive shared work benefits and regular unemployment compensation benefits in an amount that exceeds the maximum total amount of benefits payable to that individual in a benefit year as provided by subsection (f) of K.S.A. 44-704 and amendments thereto.

(o) An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an exhaustee under K.S.A. 44-704a and 44-704b and amendments thereto and is entitled to receive extended benefits under such statutes if the individual is otherwise eligible under such statutes.

(p) The secretary may terminate a shared work plan for good cause if the secretary determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program.

(q) Notwithstanding any other provisions of this section, an individual shall not be eligible to receive shared work benefits for more than 26 calendar weeks during the twelve-month period of the shared work plan, except that two weeks of additional benefits shall be payable to claimants who exhaust regular benefits program during the period July 1, 2003 through June 30, 2004. No week shall be counted as a week for which an individual is eligible for shared work benefits for the purposes of this section unless the week occurs within the twelve-month period of the shared work plan.

(r) No shared work benefit payment shall be made under any shared work plan or this section for any week which commences before April 1, 1989.

(s) This section shall be construed as part of the employment security law.

History: L. 1988, ch. 172, § 1; L. 1990, ch. 189, § 1; L. 1991, ch. 145, § 5; L. 1992, ch. 74, § 5; L. 2003, ch. 96 § 3; July 1; L. 2004, Ch. 179 § 74; July 1.

44-758. Lessor employing units and client lessees; liability for contributions on wages for services performed for client lessees; reports and records.

(a) Any employer or any individual, organization, partnership, corporation or other legal entity which is a lessor employing unit, as defined by subsection (ff) of K.S.A. 44-703 and amendments thereto, shall be

liable for contributions on wages paid by the lessor employing unit to individuals performing services for client lessees. For the purposes of the employment security law, no client lessee shall lease an individual proprietor, partner or corporate officer, who is a shareholder or a member of the board of directors of the corporation, from any lessor employing unit. Any client lessee shall be jointly and severally liable for any unpaid contributions, interest and penalties due under this law from any lessor employing unit attributable to wages for services performed for the client lessee by employees leased to the client lessee. The lessor employing unit shall keep separate records and submit separate quarterly contributions and wage reports for each client lessee.

(b) Any lessor employing unit which is currently engaged in the business of leasing employees to client lessees shall comply with the provisions of subsection (a) prior to October 1, 1990.

(c) The provisions of this section shall not be applicable to private employment agencies which provide temporary workers to employers on a temporary help basis, provided the private employment agencies are liable as employers for the payment of contributions on wages paid to temporary workers so employed.

(d) This section shall be construed as part of the employment security law.

History: L. 1990, ch. 186, § 1; July 1.

44-759. Administrative rulings; availability of. On and after January 1, 1998, the secretary of labor shall make available in a medium readily accessible to contributing employers all administrative rulings of the department of labor which affect the duties and responsibilities of contributing employers. Such rulings shall be provided in such a manner as to conceal the identity of the specific employer for whom the ruling concerned. The secretary shall cause to be published in the Kansas register a description of each such administrative ruling within 30 days of such ruling together with specific instructions as to how the complete text of the administrative ruling may be obtained.

History: L. 1997, ch. 182, § 82; July 3; L. 2004, Ch. 179 § 75; July 1.

44-760. This act shall be known and may be cited as the employment security insurance act for domestic violence survivors.

History: L. 2003, ch. 75 § 1; July 1

44-761. As used in this act, unless the context clearly shows otherwise:

(a) “Abuse” means:

(1) Causing or attempting to cause physical harm;

(2) placing another person in fear of imminent physical harm;

(3) causing another person to engage involuntarily in sexual relations by force, threats or duress, or threatening to do so;

(4) engaging in mental abuse, which includes threats, intimidation and acts designed to induce terror;

(5) depriving another person of health care, housing, food or other necessities of life; or

(6) restraining the liberty of another.

(b) “Domestic violence” means abuse committed against an employee or an employee’s spouse or dependent child by:

(1) A current or former spouse of the employee;

(2) a person with whom the employee shares parentage of a child in common;

(3) a person who is cohabitating with, or has cohabitated with, the employee;

(4) a person who is related by blood or marriage; or

(5) a person with whom the employee has or had a dating or engagement relationship.

History: L. 2003 ch. 75 § 2; July 1

44-762. The secretary of labor shall implement a training curriculum for employees who will interact with claimants under the provisions of sections 1 through 6, and amendments thereto. Such curriculum shall be approved by the state domestic violence and sexual assault coalition designated by the center for disease control or health and human services.

History: L. 2003 ch. 75 § 3; July 1; L. 2004, Ch. 179 § 76; July 1.

44-763. No contributing employer or rated governmental employer’s account shall be charged with respect to the benefits paid to a claimant who is eligible to receive employment security benefits due to domestic violence as set forth in K.S.A. 44-706, and amendments thereto.

History: L. 2003, ch. 75 § 4; July 1

44-764. This act shall be deemed part of and supplemental to the employment security law.

History: L. 2003, ch. 75 § 5; July 1

44-765. Motor vehicle lease agreements; definitions; determination of employment relationship. (a) As

used in this section:

(1) "Driver" means an individual who operates a motor vehicle which is leased to a licensed motor carrier pursuant to a lease agreement.

(2) "Lease agreement" means a written contract by which an owner grants the use of one or more motor vehicles and agrees to furnish a driver for each such motor vehicle.

(3) "Licensed motor carrier" means any person that holds a certificate of convenience and necessity, a certificate of public service, private carrier permit or an interstate license as an interstate exempt carrier from the state corporation commission, or is required to register motor carrier equipment pursuant to 49 U.S.C. §14504.

(4) "Motor vehicle" means any automobile, truck-trailer, semitrailer, tractor or any other self-propelled or motor driven vehicle used upon any of the public highways of Kansas for the purpose of transporting property.

(5) "Owner" means a person to whom title to a motor vehicle has been issued.

(6) "Owner-operator" means any owner which leases one or more motor vehicles to a licensed motor carrier pursuant to a lease agreement.

(7) "Person" means any individual, partnership, corporation, limited liability company or any other business entity.

(b) For purposes of the employment security law, it is hereby declared to be the policy of this state that, consistent with requirements of 49 C.F.R. §376.12(c) (1), an independent contractor relationship between an owner-operator and a licensed motor carrier may exist when the licensed motor carrier complies with the applicable statutory and regulatory requirements governing a licensed motor carrier's use of leased vehicles in the transportation of property. To that end, in determining whether an employment relationship exists between a licensed motor carrier and a driver, the fact that the licensed motor carrier, pursuant to a lease agreement, requires the driver to comply with applicable provisions of the regulations of the state corporation commission, federal motor carrier safety administration or other federal agency having jurisdiction of motor carriers shall not be considered as the licensed motor carrier's exercise of control over the driver.

History: L. 2006, ch. 118, § 1; July 1.

44-766. Employers; misclassification of employee; penalty. (a) No person shall knowingly and intentionally

misclassify an employee as an independent contractor for the sole or primary purpose of avoiding either state income tax withholding and reporting requirements or state unemployment insurance contributions reporting requirements.

(b) Any person violating subsection (a) shall be subject to a penalty pursuant to K.S.A. 79-3228, and amendments thereto.

History: L. 2006, ch. 118, § 2; July 1.

44-767. Classification of workers; withholding tax and payroll information; unemployment insurance contributions due; determination of misclassification of worker, collection of income withholding taxes.

(a) The secretary or the secretary's designee shall make all determinations regarding the proper classification of any worker pursuant to K.S.A. 44-703(i)(3), and amendments thereto.

(b) If the department of revenue has reason to believe that a business has not properly classified a worker pursuant to K.S.A. 44-703(i)(3), and amendments thereto, the department of revenue shall request a determination of such worker's classification pursuant to K.S.A. 44-703(i)(3), and amendments thereto, from the secretary. The department of revenue shall submit to the secretary all relevant information, including withholding tax and payroll information, in the possession of the department of revenue necessary to make such determination.

(1) If the secretary deems it necessary to obtain additional information from the department of revenue in order to make such determination or to calculate any assessment of unemployment insurance contributions due, the secretary shall notify the department of revenue. The department of revenue shall obtain and remit the requested information to the secretary.

(2) The department of revenue shall accept the secretary's determination made pursuant to subsection (a) and shall rely on such determination in the department of revenue's examination and assessment of the business with regard to such worker.

(3) Relying upon the information provided by the department of revenue pursuant to this section, and amendments thereto, and upon making the determination required by subsection (a), the secretary shall notify the business of any unemployment insurance contributions due pursuant to this act. The secretary shall not engage a separate investigation into the same matter once a determination has been made pursuant to subsection (a) based upon information so obtained through the department of revenue.

(4) Information shared with the secretary by the department of revenue pursuant to this section, shall be held by the secretary to the same confidentiality standards as may be required by statutes governing the department of revenue.

(c) Upon investigation and determination by the secretary that a business has misclassified a worker, the secretary shall notify the department of revenue that a determination has been made, referring the matter for collection of applicable income withholding taxes.

(1) Upon request of the department of revenue, the secretary shall make available for its review any information relied upon by the secretary in making the determination.

(2) Information shared with the department of revenue by the secretary pursuant to this section shall be held by the department of revenue to the same confidentiality standards as may be required by statutes governing the department of labor.

(d) Each of the secretary of labor and the secretary of revenue may adopt rules and regulations necessary to effect the purposes of this section.

(e) This section shall be a part of and supplemental to the employment security law.

History: L. 2011, ch. 81, § 1; July 1.

44-768. Determination of classification of worker as an employee or independent contractor; circumstances for reasonable basis of classification; imposition of penalties, when. The secretary shall make the determination of employment required by K.S.A. 44-703(i)(3)(D), and amendments thereto, by examining the totality of the circumstances in which the individual renders service and shall exercise strict impartiality in the conduct of any such determination.

(a) The secretary shall first seek to determine whether the business in question has a reasonable basis upon which it relied when it determined the classification of a worker as an employee or independent contractor. If a reasonable basis is found, the classification shall be deemed valid subject to the provisions of K.S.A. 44-703(i)(3)(D), and amendments thereto. A business has a reasonable basis for its classification of workers if:

(1) Any of the following circumstances are present:

(A) The business reasonably relied upon a judicial decision regarding employment classification matters rendered by a federal or state court of competent jurisdiction in the state of Kansas;

(B) the business previously received a ruling from the internal revenue service, the department of revenue,

or the department of labor validating the business' classification of workers;

(C) the business has been previously audited by the internal revenue service, the department of revenue, or the department of labor at a time when the business classified workers similarly situated in the same manner to those workers currently in question, and such audit did not result in reclassification of those workers so similarly situated; or

(D) the business reasonably relied on the application of worker classifications customary among a significant segment of its industry; and

(2) The business showed consistency in its practices by:

(A) The business classified the worker in question and any similarly situated worker in the same manner; and

(B) the business has consistently and properly reported to the appropriate taxing authorities wages or payments to the workers in question and those similarly situated.

(b) If a reasonable basis as articulated herein cannot be ascertained, then when making a determination the secretary shall then consider the following factors:

(1) Must the individual comply with specific instructions from the business regarding when, where, and how to perform services so provided?

(2) Are the activities of the individual integrated into the ongoing operations of the business?

(3) If needed to accomplish the desired end result, does the individual have the responsibility to hire, supervise and pay assistants?

(4) Must the individual work exclusively for the business in question?

(5) Is payment by the business to the individual for services contingent on completion of established benchmarks or tasks?

(6) Does the individual provide significant tools, materials or other equipment used in the accomplishment of the desired end result?

(7) Is the individual responsible for any expenses incurred in the performance of services?

(8) Can the individual suffer a loss in the course of performing services?

(c) The secretary shall seek to educate the business by assisting the business in identifying facts which may establish either classification.

(d) If imposition of a penalty or interest could otherwise be imposed by this act due to a misclassification of a worker, before imposition of such assessment, the secretary shall consider the

appropriateness of the penalty or interest to the business charged with the violation of misclassifying a worker given the circumstances in which the misclassification occurred, including whether or not a reasonable basis for the classification exists. If a reasonable basis for the classification exists, then the secretary shall not impose penalties or interest or seek recovery of back taxes for the time period prior to the secretary's determination that a reasonable basis exists.

(e) This section shall be a part of and supplemental to the employment security law.

History: L. 2011, ch. 81, § 2; July 1.

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